

|                   |                                                                                                                              |   |     |               |                         |                |
|-------------------|------------------------------------------------------------------------------------------------------------------------------|---|-----|---------------|-------------------------|----------------|
| <b>Tab 1</b>      | <b>SB 170 by Polsky (CO-INTRODUCERS) Book;</b> (Identical to H 00159) Public Records/Lottery Winners                         |   |     |               |                         |                |
| <b>Tab 2</b>      | <b>CS/SB 510 by EE, Brodeur (CO-INTRODUCERS) Rodrigues;</b> (Compare to CS/H 00301) Financial Disclosures for Local Officers |   |     |               |                         |                |
| <del>421870</del> | D                                                                                                                            | S | WD  | RC, Brodeur   | Delete everything after | 02/10 02:44 PM |
| 318288            | D                                                                                                                            | S | RS  | RC, Brodeur   | Delete everything after | 02/10 02:44 PM |
| 386248            | SD                                                                                                                           | S | RCS | RC, Brodeur   | Delete everything after | 02/10 02:44 PM |
| <b>Tab 3</b>      | <b>CS/CS/SB 644 by RI, CA, Brodeur;</b> (Similar to CS/H 00423) Building Regulation                                          |   |     |               |                         |                |
| 719540            | A                                                                                                                            | S | RCS | RC, Brodeur   | Delete L.129 - 287:     | 02/10 02:53 PM |
| <del>223016</del> | SA                                                                                                                           | S | WD  | RC, Brodeur   | Delete L.129 - 288:     | 02/10 02:53 PM |
| <b>Tab 4</b>      | <b>CS/CS/SB 706 by ED, CA, Perry;</b> (Identical to CS/CS/H 00851) School Concurrency                                        |   |     |               |                         |                |
| 250496            | A                                                                                                                            | S | RS  | RC, Perry     | Delete L.49 - 52:       | 02/10 04:59 PM |
| 863198            | SA                                                                                                                           | S | RCS | RC, Perry     | Delete L.49:            | 02/10 04:59 PM |
| <b>Tab 5</b>      | <b>CS/SB 772 by CF, Diaz (CO-INTRODUCERS) Perry;</b> (Compare to CS/CS/CS/H 01439) Protection of Victims and Witnesses       |   |     |               |                         |                |
| 413494            | A                                                                                                                            | S | RCS | RC, Diaz      | Delete L.40 - 154:      | 02/10 03:07 PM |
| 144340            | AA                                                                                                                           | S | RCS | RC, Diaz      | btw L.46 - 47:          | 02/10 03:07 PM |
| <b>Tab 6</b>      | <b>CS/SB 882 by CA, Brodeur;</b> (Similar to H 00761) Inventories of Critical Wetlands                                       |   |     |               |                         |                |
| 846854            | A                                                                                                                            | S | RS  | RC, Brodeur   | Delete L.24 - 35:       | 02/10 05:16 PM |
| 187630            | SA                                                                                                                           | S | RCS | RC, Brodeur   | Delete L.24 - 35:       | 02/10 05:16 PM |
| <b>Tab 7</b>      | <b>CS/SB 896 by ED, Burgess;</b> (Similar to CS/H 00573) Educator Certification Pathways for Veterans                        |   |     |               |                         |                |
| <b>Tab 8</b>      | <b>SB 944 by Baxley;</b> (Similar to CS/H 01227) Online Marketplace Transparency                                             |   |     |               |                         |                |
| 569968            | A                                                                                                                            | S |     | RC, Baxley    | Delete L.42 - 202:      | 02/09 09:28 AM |
| 380838            | AA                                                                                                                           | S |     | RC, Brandes   | Delete L.48 - 55.       | 02/09 10:55 AM |
| 543416            | AA                                                                                                                           | S |     | RC, Brandes   | Delete L.133 - 138.     | 02/09 10:54 AM |
| 942640            | AA                                                                                                                           | S |     | RC, Brandes   | btw L.161 - 162:        | 02/09 10:59 AM |
| <b>Tab 9</b>      | <b>CS/SB 1000 by EN, Albritton;</b> (Similar to CS/H 01291) Nutrient Application Rates                                       |   |     |               |                         |                |
| 628210            | D                                                                                                                            | S | RCS | RC, Albritton | Delete everything after | 02/10 05:35 PM |
| <b>Tab 10</b>     | <b>CS/SB 1002 by CA, Burgess;</b> (Similar to CS/H 01097) Florida Citrus                                                     |   |     |               |                         |                |
| <b>Tab 11</b>     | <b>CS/SB 1012 by JU, Burgess (CO-INTRODUCERS) Book, Perry;</b> (Identical to CS/H 00697) Victims of Crimes                   |   |     |               |                         |                |
| 749586            | A                                                                                                                            | S |     | RC, Burgess   | Delete L.135:           | 02/09 11:06 AM |
| <b>Tab 12</b>     | <b>SB 1058 by Hutson;</b> (Identical to H 00695) Property Insurer Reimbursements                                             |   |     |               |                         |                |
| <b>Tab 13</b>     | <b>CS/CS/SB 1062 by CM, JU, Bradley;</b> (Identical to CS/CS/H 00545) Service of Process                                     |   |     |               |                         |                |
| <b>Tab 14</b>     | <b>CS/CS/SB 1140 by BI, RI, Perry;</b> (Identical to CS/CS/H 00669) Alarm Systems                                            |   |     |               |                         |                |

|               |                                                                                     |
|---------------|-------------------------------------------------------------------------------------|
| <b>Tab 15</b> | <b>SB 1240</b> by <b>Harrell</b> ; (Identical to H 00899) Mental Health of Students |
|---------------|-------------------------------------------------------------------------------------|

|               |                                                                                                  |
|---------------|--------------------------------------------------------------------------------------------------|
| <b>Tab 16</b> | <b>CS/SB 1260</b> by <b>CA, Gruters</b> ; (Similar to CS/H 00897) Independent Hospital Districts |
|---------------|--------------------------------------------------------------------------------------------------|

|               |                                                                                                   |
|---------------|---------------------------------------------------------------------------------------------------|
| <b>Tab 17</b> | <b>CS/CS/SB 1536</b> by <b>CM, BI, Boyd</b> ; (Identical to CS/H 00389) Money Services Businesses |
|---------------|---------------------------------------------------------------------------------------------------|

|               |                                                                                   |
|---------------|-----------------------------------------------------------------------------------|
| <b>Tab 18</b> | <b>SB 1680</b> by <b>Gruters</b> ; (Similar to CS/H 00431) Financial Institutions |
|---------------|-----------------------------------------------------------------------------------|

510104   D            S            RCS            RC, Gruters            Delete everything after   02/10 04:47 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**

**Senator Passidomo, Chair**

**Senator Garcia, Vice Chair**

**MEETING DATE:** Thursday, February 10, 2022

**TIME:** 11:00 a.m.—12:30 p.m.

**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Passidomo, Chair; Senator Garcia, Vice Chair; Senators Albritton, Baxley, Bean, Book, Boyd, Bracy, Brandes, Diaz, Farmer, Gibson, Gruters, Hutson, Mayfield, Powell, and Stargel

| TAB | BILL NO. and INTRODUCER                                                                                                    | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | COMMITTEE ACTION            |
|-----|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 1   | <b>SB 170</b><br>Polsky<br>(Identical H 159)                                                                               | Public Records/Lottery Winners; Creating a temporary exemption from public records for the names of lottery winners who win prizes of more than a specified value; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.<br><br>RI 11/02/2021 Favorable<br>GO 01/26/2022 Favorable<br>RC 02/10/2022 Favorable                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Favorable<br>Yeas 17 Nays 0 |
| 2   | <b>CS/SB 510</b><br>Ethics and Elections / Brodeur<br>(Compare CS/H 301, H 7067)                                           | Financial Disclosures for Local Officers; Requiring specified local officers to file a full and public disclosure of financial interests, etc.<br><br>EE 11/30/2021 Fav/CS<br>CA 01/12/2022 Not Considered<br>CA 01/18/2022 Favorable<br>RC 02/10/2022 Fav/CS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Fav/CS<br>Yeas 11 Nays 5    |
| 3   | <b>CS/CS/SB 644</b><br>Regulated Industries / Community<br>Affairs / Brodeur<br>(Similar CS/H 423, Compare<br>CS/CS/H 635) | Building Regulation; Revising eligibility requirements for a person applying to become certified as a building code inspector or plans examiner; revising the special conditions or requirements that the Florida Building Code Administrators and Inspectors Board may impose on provisional certificates; prohibiting local laws, ordinances, or regulations that prohibit or restrict a private property owner's ability to obtain a building permit to demolish a single-family residential structure located in certain flood zones if certain conditions are met; requiring the local jurisdiction to provide access to certain documents to a private provider, owner, and contractor, etc.<br><br>CA 01/12/2022 Not Considered<br>CA 01/18/2022 Not Considered<br>CA 01/25/2022 Fav/CS<br>RI 02/01/2022 Fav/CS<br>RC 02/10/2022 Fav/CS | Fav/CS<br>Yeas 16 Nays 1    |

# COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 10, 2022, 11:00 a.m.—12:30 p.m.

| TAB | BILL NO. and INTRODUCER                                                                                  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | COMMITTEE ACTION            |
|-----|----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 4   | <b>CS/CS/SB 706</b><br>Education / Community Affairs / Perry<br>(Identical CS/CS/H 851)                  | School Concurrency; Revising provisions specifying when school concurrency is deemed satisfied; specifying that proportionate-share mitigation must be set aside and not spent if an improvement has not been identified, etc.<br><br>CA 01/25/2022 Fav/CS<br>ED 02/01/2022 Fav/CS<br>RC 02/10/2022 Fav/CS                                                                                                                                                                                                                                                                                                                                                                                          | Fav/CS<br>Yeas 17 Nays 0    |
| 5   | <b>CS/SB 772</b><br>Children, Families, and Elder Affairs / Diaz<br>(Compare CS/CS/CS/H 1439, CS/S 1852) | Protection of Victims and Witnesses; Revising the standard for orders to protect certain testifying victims and witnesses; prohibiting depositions of certain victims and witnesses in certain proceedings without a showing of good cause; requiring the court to appoint a guardian ad litem or other advocate for the deponent under certain circumstances; requiring the University of South Florida, in consultation with a specified organization, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data, etc.<br><br>CF 01/11/2022 Fav/CS<br>JU 01/31/2022 Favorable<br>RC 02/10/2022 Fav/CS | Fav/CS<br>Yeas 17 Nays 0    |
| 6   | <b>CS/SB 882</b><br>Community Affairs / Brodeur<br>(Similar H 761)                                       | Inventories of Critical Wetlands; Requiring each water management district governing board, in cooperation with local governments, to develop a list of critical wetlands for acquisition using funds from the Land Acquisition Trust Fund; requiring the boards to consider certain criteria when including wetlands on the list, etc.<br><br>EN 01/10/2022 Favorable<br>CA 02/02/2022 Fav/CS<br>RC 02/10/2022 Fav/CS                                                                                                                                                                                                                                                                              | Fav/CS<br>Yeas 17 Nays 0    |
| 7   | <b>CS/SB 896</b><br>Education / Burgess<br>(Similar CS/H 573)                                            | Educator Certification Pathways for Veterans; Authorizing the Department of Education to issue a temporary certificate to specified military servicemembers who meet certain criteria; requiring a teacher mentorship for specified military servicemembers who hold a temporary certificate; specifying the duration and issuance of a temporary certificate for specified military servicemembers, etc.<br><br>MS 01/11/2022 Favorable<br>ED 02/01/2022 Fav/CS<br>RC 02/10/2022 Favorable                                                                                                                                                                                                         | Favorable<br>Yeas 17 Nays 0 |



**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Thursday, February 10, 2022, 11:00 a.m.—12:30 p.m.

| TAB | BILL NO. and INTRODUCER                                                                                           | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | COMMITTEE ACTION            |
|-----|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 8   | <b>SB 944</b><br>Baxley<br>(Similar CS/H 1227)                                                                    | Online Marketplace Transparency; Requiring online marketplaces to require high-volume third-party sellers using their service to provide certain information to the online marketplace within a specified timeframe; requiring the online marketplace to suspend certain sellers who do not provide such a certification or updated information; requiring online marketplaces to disclose certain information in a specified manner; preempting the regulation of the verification and disclosure of such information to the Department of Legal Affairs, etc.<br><br>CM 01/18/2022 Favorable<br>CA 01/25/2022 Favorable<br>RC 02/10/2022 Temporarily Postponed                                                                     | Temporarily Postponed       |
| 9   | <b>CS/SB 1000</b><br>Environment and Natural Resources / Albritton<br>(Similar CS/H 1291, Compare H 1289, S 1612) | Nutrient Application Rates; Defining the terms "certified professional" and "rate tailoring"; authorizing the use of rate tailoring in specified circumstances; authorizing producers to use written recommendations from certified professionals to tailor their recommended nutrient application rates under certain circumstances; requiring revisions to recommended application rates by certain state universities and Florida College System institutions to authorize rate tailoring, etc.<br><br>EN 01/10/2022 Fav/CS<br>AG 01/19/2022 Favorable<br>RC 02/10/2022 Fav/CS                                                                                                                                                    | Fav/CS<br>Yeas 17 Nays 0    |
| 10  | <b>CS/SB 1002</b><br>Community Affairs / Burgess<br>(Similar CS/H 1097)                                           | Florida Citrus; Citing this act as the "Citrus Recovery Act"; revising the membership of the Florida Citrus Commission; increasing the number of citrus districts in this state and revising the counties that comprise each district; requiring certain entities to provide reports on citrus production research to the commission at specified intervals and upon request of the commission; requiring that new varieties of citrus fruit produced from research or studies funded by state funds be made exclusively available for licensing and commercialization to the Department of Citrus or its designee for a specified timeframe, etc.<br><br>AG 01/13/2022 Favorable<br>CA 02/02/2022 Fav/CS<br>RC 02/10/2022 Favorable | Favorable<br>Yeas 17 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Thursday, February 10, 2022, 11:00 a.m.—12:30 p.m.

| TAB | BILL NO. and INTRODUCER                                                                          | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | COMMITTEE ACTION            |
|-----|--------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 11  | <b>CS/SB 1012</b><br>Judiciary / Burgess<br>(Identical CS/H 697)                                 | Victims of Crimes; Requiring law enforcement personnel to ensure that crime victims are given information about specified rights, upon request, at all stages of criminal, parole, or juvenile proceedings; requiring law enforcement personnel to ensure that crime victims are given information about their right to employ private counsel; encouraging The Florida Bar to develop a registry of attorneys willing to serve on a pro bono basis as advocates for crime victims, etc.<br><br>CJ 01/25/2022 Favorable<br>JU 01/31/2022 Fav/CS<br>RC 02/10/2022 Temporarily Postponed                                                                                                         | Temporarily Postponed       |
| 12  | <b>SB 1058</b><br>Hutson<br>(Identical H 695)                                                    | Property Insurer Reimbursements; Defining the term "unsound insurer"; revising requirements for coverage under the Florida Hurricane Catastrophe Fund of certain policies assumed by authorized insurers or the Citizens Property Insurance Corporation, etc.<br><br>BI 01/12/2022 Favorable<br>CA 02/02/2022 Favorable<br>RC 02/10/2022 Favorable                                                                                                                                                                                                                                                                                                                                             | Favorable<br>Yeas 17 Nays 0 |
| 13  | <b>CS/CS/SB 1062</b><br>Commerce and Tourism /<br>Judiciary / Bradley<br>(Identical CS/CS/H 545) | Service of Process; Authorizing the Department of State to electronically receive service of process under ch. 48, F.S.; revising procedures for service on partnerships, limited liability partnerships, and limited partnerships; requiring designation of registered agents and registered offices by certain partnerships, corporations, and companies; revising provisions related to service on public agencies and officers; providing for substituted service on certain nonresidents and foreign business entities and on individuals and foreign business entities concealing their whereabouts, etc.<br><br>JU 01/10/2022 Fav/CS<br>CM 01/31/2022 Fav/CS<br>RC 02/10/2022 Favorable | Favorable<br>Yeas 17 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

## Rules

Thursday, February 10, 2022, 11:00 a.m.—12:30 p.m.

| TAB | BILL NO. and INTRODUCER                                                                                    | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | COMMITTEE ACTION            |
|-----|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 14  | <b>CS/CS/SB 1140</b><br>Banking and Insurance /<br>Regulated Industries / Perry<br>(Identical CS/CS/H 669) | Alarm Systems; Authorizing individuals with certain fire alarm certifications to complete a reduced number of training and continuing education hours for the prevention of false alarms; revising the definition of the term "low-voltage alarm system project" to include certain video cameras and closed-circuit television systems; prohibiting a local enforcement agency from requiring plans and specifications as a condition for obtaining a permit for a fire alarm system project; requiring a local enforcement agency to issue certain permits in person or electronically; requiring a local enforcement agency to perform at least one inspection for a fire alarm system project, etc.<br><br>RI 01/18/2022 Fav/CS<br>BI 02/02/2022 Fav/CS<br>RC 02/10/2022 Favorable                                                                 | Favorable<br>Yeas 17 Nays 0 |
| 15  | <b>SB 1240</b><br>Harrell<br>(Identical H 899)                                                             | Mental Health of Students; Revising data the Department of Children and Families is required to analyze when creating its annual report on the initiation of certain involuntary examinations; requiring charter schools to be in compliance with laws relating to reporting involuntary examinations; requiring the Department of Education, by a specified date, to share with the Department of Children and Families data received from school districts relating to involuntary examinations; revising requirements for plans relating to mental health assistance allocations, etc.<br><br>CF 01/18/2022 Favorable<br>ED 02/01/2022 Favorable<br>RC 02/10/2022 Favorable                                                                                                                                                                         | Favorable<br>Yeas 17 Nays 0 |
| 16  | <b>CS/SB 1260</b><br>Community Affairs / Gruters<br>(Similar CS/H 897)                                     | Independent Hospital Districts; Authorizing the governing body of an independent hospital district to evaluate certain benefits of the potential conversion of the independent hospital district to a nonprofit entity under certain circumstances; requiring that the evaluation be completed and the final report be presented to the governing body within a specified timeframe; requiring the governing body to negotiate and complete an agreement with the board of county commissioners for each affected county before converting the independent hospital district to a nonprofit entity; prohibiting members of the board of county commissioners for counties party to such agreements from serving on the board of the successor nonprofit entity, etc.<br><br>HP 01/26/2022 Favorable<br>CA 02/02/2022 Fav/CS<br>RC 02/10/2022 Favorable | Favorable<br>Yeas 16 Nays 1 |

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Thursday, February 10, 2022, 11:00 a.m.—12:30 p.m.

| TAB                             | BILL NO. and INTRODUCER                                                                                | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | COMMITTEE ACTION            |
|---------------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 17                              | <b>CS/CS/SB 1536</b><br>Commerce and Tourism / Banking<br>and Insurance / Boyd<br>(Identical CS/H 389) | Money Services Businesses; Providing that a rule may require certain reports to the Office of Financial Regulation to contain declarations by control persons, rather than officers or other responsible persons; providing that control persons, rather than officers, are not liable for loss or damages under certain circumstances; requiring licensees to report changes in control persons, rather than certain other entities or persons; repealing a provision relating to control of a money services business, etc.<br><br>BI 01/18/2022 Fav/CS<br>CM 01/31/2022 Fav/CS<br>RC 02/10/2022 Favorable                                                                                                                                                                                                                                                                                                        | Favorable<br>Yeas 16 Nays 0 |
| 18                              | <b>SB 1680</b><br>Gruters<br>(Similar CS/H 431)                                                        | Financial Institutions; Providing that the failure of foreign nationals to appear through video conference at certain hearings is grounds for denial of certain applications; providing that the imposition of fees or charges upon consumers for online audit verifications of financial institution accounts is a violation of the Florida Deceptive and Unfair Trade Practices Act; revising the circumstances pursuant to which the Office of Financial Regulation is required to conduct certain examinations; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or for a target market and the ability of such service area or target market to support new and existing bank facilities, etc.<br><br>BI 01/18/2022 Favorable<br>AP 01/27/2022 Favorable<br>RC 02/10/2022 Fav/CS | Fav/CS<br>Yeas 17 Nays 0    |
| Other Related Meeting Documents |                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                             |

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 170

INTRODUCER: Senators Polsky and Book

SUBJECT: Public Records/Lottery Winners

DATE: February 8, 2022

REVISED: \_\_\_\_\_

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|------------|----------------|-----------|------------------|
| 1. Kraemer | Imhof          | RI        | <b>Favorable</b> |
| 2. Ponder  | McVane         | GO        | <b>Favorable</b> |
| 3. Kraemer | Phelps         | RC        | <b>Favorable</b> |

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## I. Summary:

SB 170 makes confidential and exempt from public record inspection and copying requirements the following information held by the Department of Lottery: the name of a winner of a lottery prize valued at \$250,000 or more, for 90 days from the date a prize is claimed, unless the winner consents to the release of his or her name. However, the information must be made available to other governmental entities for specified purposes.

The exemption is subject to the Open Government Sunset Review Act (act) and will stand repealed on October 2, 2027, unless reviewed and reenacted by the Legislature.

The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

The bill may have a minimal fiscal impact on the governmental sector as the Department of Lottery will continue to incur costs related to the redaction of records in responding to public records requests.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### **Executive Agency Records – The Public Records Act**

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

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

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

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

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

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<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

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

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

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

### **Open Government Sunset Review Act**

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>16</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>20</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the

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<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>11</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>12</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>13</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>14</sup> *Id.*

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>21</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>26</sup>

## **Department of the Lottery**

### ***Operations***

Section 15 of Article X of the State Constitution authorizes state-operated lotteries. Pursuant to this provision, the Florida Public Education Lottery Act<sup>27</sup> establishes a state lottery system intended primarily to generate revenue for public education of the state.<sup>28</sup> The Department of the Lottery (department) is charged with supervising and operating the lottery in accordance with the provisions of the Florida Public Education Lottery act and rules adopted pursuant thereto.<sup>29</sup> In accordance with s. 24.102(2), F.S., the department operates the state lottery in accordance with the intent of the Legislature, which provides:

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> Sections 24.101 to 24.124, F.S.

<sup>28</sup> Section 24.102, F.S.

<sup>29</sup> Section 24.105(2), F.S.



- The net proceeds of lottery games must be used to support improvements in public education;
- Lottery operations must be undertaken as an entrepreneurial business enterprise; and
- The department must be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens”<sup>30</sup> for the benefit of public education.<sup>31</sup> The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.<sup>32</sup> Retailers receive commissions of five percent of the ticket price, one percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.<sup>33</sup> Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.<sup>34</sup>

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.<sup>35</sup> Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. Contracting with a retailer with a felony conviction or plea within the last 10 years is prohibited,<sup>36</sup> and the authority to act as a retailer may not be transferred.<sup>37</sup>

Retailers may not extend credit or lend money to a person to purchase a lottery ticket. The use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods) is allowed, if the lottery ticket purchase is part of a purchase transaction for other goods and services that cost \$20 or more.<sup>38</sup>

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<sup>30</sup> See s. 24.104, F.S.

<sup>31</sup> See s. 24.121(2), F.S.

<sup>32</sup> See s. 24.105(16), F.S.

<sup>33</sup> See Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, *Review of the Florida Lottery, 2020*, Report No. 21-02, (Jan. 2021), available at <https://oppaga.fl.gov/Documents/Reports/21-02.pdf>, at page 1, (footnote 4) (last visited Oct. 19, 2021).

<sup>34</sup> *Id.*

<sup>35</sup> See s. 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

<sup>36</sup> See s. 24.112(3)(c), F.S. There is an exception to this prohibition, when the department determines that the person has been pardoned or has had his or her civil rights restored, he or she has engaged in lawful commerce and maintained good integrity and citizenship within the community, or the person in question has terminated his or her relationship with the retailer.

<sup>37</sup> See s. 24.112(4), F.S.

<sup>38</sup> See s. 24.118(1), F.S.

The department may establish by rule, a system to verify and pay winning lottery tickets:<sup>39</sup>

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than \$600.<sup>40</sup> Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a department office may redeem a winning ticket valued at \$600 or more.<sup>41</sup> Winning tickets are paid at the claimant's option in a combination of cash, check, or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.<sup>42</sup> Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the winning drawing.

The department may adopt rules governing the types of lottery games to be conducted,<sup>43</sup> including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”<sup>44</sup>

The department promotes responsible lottery ticket play and directs persons struggling with a gambling problem to contact the 1-888-ADMIT-IT telephone line for assistance.<sup>45</sup>

### ***Confidential and Exempt Information Held by the Department of Lottery***

Section 24.1051, F.S., makes two separate classes of information held by the department confidential and exempt from public record inspection and copying requirements.

### **Information Relating to the Security Or Integrity of the Department**

Subsection (1) makes confidential and exempt:

- Information that, if released, could harm the security or integrity of the department, including:

<sup>39</sup> See s. 24.115, F.S., and Fla. Admin. Code R. 53ER 21-3.

<sup>40</sup> *Id.* The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

<sup>41</sup> *Id.* Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

<sup>42</sup> See s. 24.115(1)(f), F.S.

<sup>43</sup> See s. 24.105(9)(a), F.S.

<sup>44</sup> Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, Laws of Fla., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

<sup>45</sup> See <http://www.flalottery.com/playResponsibly> (last visited Oct. 19, 2021).

- Information relating to the security of the department's technologies, processes, and practices designed to protect networks, computers, data processing software, data, and data systems from attack, damage, or unauthorized access.
- Security information or information that would reveal security measures of the department, whether physical or virtual.
- Information about lottery games, promotions, tickets, and ticket stock, including information concerning the description, design, production, printing, packaging, shipping, delivery, storage, and validation of such games, promotions, tickets, and stock.
- Information concerning terminals, machines, and devices that issue tickets.
- Information that must be maintained as confidential in order for the department to participate in a multistate lottery association or game.
- Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors.
- Financial information about an entity which is not publicly available and is provided to the department in connection with its review of the financial responsibility of the entity pursuant to ss. 24.111 or s. 24.112, F.S., provided that the entity marks such information as confidential. However, financial information related to any contract or agreement, or an addendum thereto, with the department, including the amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, and penalties, shall be public record.

This information may be released to other governmental entities as needed in connection with the performance of their duties. The receiving governmental entity must maintain the confidential and exempt status of such information.

The exemption in subsection (1) is subject to the Open Government Sunset Review Act pursuant to s. 119.15, F.S., and is repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.<sup>46</sup>

#### Information Related to Lottery Prize Winners

Subsection (2) makes confidential and exempt the street address and the telephone number of a winner, unless the winner consents to the release of such information, or if required by:

- Section 24.115(4), F.S., relating to debts owed to a state agency or child support collected through a court, including spousal support or alimony if the child support obligation is being enforced by the Florida Department of Revenue; or
- Section 409.2577, F.S., relating to locating parents who have deserted their children.<sup>47</sup>

Any information made confidential and exempt under subsections (1) and (2) of s. 24.1051, F.S., must be disclosed to the Auditor General, to the Office of Program Policy Analysis and Government Accountability, or to the independent auditor selected under s. 24.123, F.S., upon request. If the President of the Senate or the Speaker of the House of Representatives certifies that information made confidential and exempt under this section is necessary for effecting legislative changes, the requested information shall be disclosed to him or her, and he or she may

<sup>46</sup> Section 24.1051(1)(d), F.S.

<sup>47</sup> Section 24.1051(2), F.S.

disclose such information to members of the Legislature and legislative staff as necessary to effect such purpose.<sup>48</sup>

Any person who, with intent to defraud or with intent to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses any information relating to the lottery designated as confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution pursuant to s. 24.1051, F.S., is guilty of a felony of the first degree, punishable by a term of imprisonment not to exceed thirty years, and a fine not to exceed \$10,000.<sup>49</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 24.1051, F.S., to make confidential and exempt from public inspection and copying requirements, for 90 days from the date a lottery prize is claimed, the name of a winner of a lottery prize valued at \$250,000 or more, unless the winner consents to the release of the information or if required by law.

This section provides for the repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** includes the following legislative statement of public necessity:

The Legislature finds that it is a public necessity that the name of a winner of a lottery prize valued at \$250,000 or more be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 90 days from the date the prize is claimed, unless such exemption is waived by the winner. Persons who win valuable lottery prizes have been the targets of violent and nonviolent criminal acts based upon publicly available identifying information. For this reason, the Legislature finds that it is a public necessity to temporarily maintain the confidential and exempt status of such information. The Legislature finds that the harm that may result from the release of the name of a winner of a lottery prize valued at \$250,000 or more outweighs the public benefit that may be derived from the disclosure of the information.

The bill takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities

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<sup>48</sup> Section 24.01051(3), F.S.

<sup>49</sup> Section 24.1051(4), F.S.

have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

**B. Public Records/Open Meetings Issues:**

**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates a new public records exemption. Thus, the bill requires a two-thirds vote for enactment.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill creates a new public records exemption. Thus, the bill includes a public necessity statement.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of this law is to protect the name of a winner of a prize valued at \$250,000 for a period of 90 days from the date the prize is claimed, unless the winner consents to the release of his or her name. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

C. **Government Sector Impact:**

According to the department, the impacts to lottery game ticket sales and transfers to the Educational Enhancement Trust Fund are indeterminate.<sup>50</sup> The department will continue to incur costs related to the redaction of records in responding to public records requests during the specified period.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 24.1051 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

None.

B. **Amendments:**

None.

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

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<sup>50</sup> See Department of the Lottery, *Agency Bill Analysis for SB 170* at 2 (Oct. 6, 2021) (on file with the Senate Committee on Regulated Industries).

By Senator Polsky

29-00040-22

2022170\_\_

A bill to be entitled

An act relating to public records; amending s. 24.1051, F.S.; creating a temporary exemption from public records for the names of lottery winners who win prizes of more than a specified value; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Present subsections (3) and (4) of section 24.1051, Florida Statutes, are redesignated as subsections (4) and (5), respectively, and a new subsection (3) is added to that section, to read:

24.1051 Exemptions from inspection or copying of public records.—

(3) (a) The name of a winner of a prize valued at \$250,000 or more is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 90 days from the date the prize is claimed, unless the winner consents to the release of his or her name or as provided for in s. 24.115(4) or s. 409.2577. After 90 days, the winner's name is no longer confidential and exempt.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public

29-00040-22

2022170\_\_

necessity that the name of a winner of a lottery prize valued at \$250,000 or more be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 90 days from the date the prize is claimed, unless such exemption is waived by the winner. Persons who win valuable lottery prizes have been the targets of violent and nonviolent criminal acts based upon publicly available identifying information. For this reason, the Legislature finds that it is a public necessity to temporarily maintain the confidential and exempt status of such information. The Legislature finds that the harm that may result from the release of the name of a winner of a lottery prize valued at \$250,000 or more outweighs the public benefit that may be derived from the disclosure of the information.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Agriculture  
Appropriations Subcommittee on Education  
Community Affairs  
Education  
Ethics and Elections  
Judiciary

**SENATOR TINA SCOTT POLSKY**

29th District

January 25, 2022

Chair Kathleen Passidomo  
Committee on Rules  
402 Senate Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Passidomo,

I respectfully request that you place SB 170, relating to Public Records/Lottery Winners, on the agenda of the Committee on Rules, at your earliest convenience.

I worked with the First Amendment Foundation on the language. SB 170 would allow lottery winners of \$250,000 or more to remain anonymous 90 days from the date the prize is claimed, unless the winner consents to the release of their name before the 90 days expires.

The reason behind the 90 days is to give the lottery winner sufficient time to plan responsibly by notifying family, obtaining financial advice, and even getting the funds into investments. It would also provide time for the winner to put security measures in place while ultimately disclosing the information to the public.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in dark ink, appearing to read "Tina S. Polsky".

Senator Tina S. Polsky  
Florida Senate, District 29

cc: John B. Phelps, Staff Director  
Cynthia Futch, Administrative Assistant

### REPLY TO:

- ☐ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- ☐ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 510

INTRODUCER: Rules Committee; Ethics and Elections Committee; and Senator Brodeur

SUBJECT: Financial Disclosures for Elected Local Officers

DATE: February 11, 2022

REVISED: \_\_\_\_\_

| ANALYST           | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------------|----------------|-----------|------------------|
| 1. <u>Rey</u>     | <u>Roberts</u> | <u>EE</u> | <b>Fav/CS</b>    |
| 2. <u>Hackett</u> | <u>Ryon</u>    | <u>CA</u> | <b>Favorable</b> |
| 3. <u>Rey</u>     | <u>Phelps</u>  | <u>RC</u> | <b>Fav/CS</b>    |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 510 requires the following local officers to file full and public disclosure of financial interests pursuant to the Florida Constitution:<sup>1</sup>

- Mayors.
- City Commissioners.
- Elected members of a city council; town council; village council; or other governing body of a city, town, or village.
- City, county, town, or village managers.

The bill revises the definition of “local officers” to conform to the changes proposed in the bill.

The bill requires members of the Commission on Ethics (Commission) and the Elections Commission to file full and public disclosure of financial interests pursuant to the Florida Constitution.

The bill resolves an inconsistency between the Code of Ethics and the Election Code by clarifying that an incumbent in an elective office or a candidate holding another position subject to an annual filing requirement who has filed his or her annual financial disclosure electronically may submit a copy of the disclosure filed with the Commission, or a verification or receipt of the filing, with the officer before whom he or she qualifies.

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<sup>1</sup> Fla. Const., art. II, s. 8(a) (2021).

Starting on January 1, 2023, full and public disclosure of financial interests must be filed electronically with the Commission. Statements of financial interests must be filed electronically starting on January 1, 2024. The Commission must post a notice on the website instructing filers on the timing of when electronic filings will be accepted.

Filers will be allowed to include attachments or other supporting documentation when filing a disclosure with the Commission.

The bill authorizes the Commission to adopt emergency rules to implement the provisions of the bill.

The bill allows the Commission to dismiss *de minimis* complaints alleging inadvertent and unintentional errors in financial disclosures.

The bill is effective upon becoming law. However, changes related to the transition to electronic filing of Form 6 Disclosures, Form 1 Disclosures, and the requirement of local officers to file a Form 6 with Commission are scheduled to begin on January 1, 2023.

## **II. Present Situation:**

### **Full and Public Disclosure of Financial Interests (CE Form 6)**

The Florida Constitution requires all elected constitutional officers, candidates for such offices, and statewide elected officers to file a full and public disclosure of their financial interests.<sup>2</sup> Other public officers, candidates, and public employees may be required to file a full and public disclosure of their financial interests as determined by law.<sup>3</sup>

Pursuant to the State Constitution, and until changed by law, the term “full and public disclosure of financial interests” means the reporting individual must disclose his or her net worth and the value of each asset and liability in excess of \$1,000.<sup>4</sup> The disclosure must be accompanied by a sworn statement with this information.<sup>5</sup> Beginning January 1, 2022, filers may not use a federal income tax return for the purposes of reporting income.<sup>6</sup> Pursuant to general law, the Commission on Ethics (Commission) has created by rule CE Form 6 to be used to make the required full and public financial disclosure.<sup>7</sup>

According to the Commission, and as articulated in the form, individuals holding the following positions must file CE Form 6: governor; lieutenant governor; cabinet members; legislators; state attorneys; public defenders; clerks of circuit courts; sheriffs; tax collectors; property appraisers; supervisors of elections; county commissioners; elected superintendents of schools; district school board members; Jacksonville City Council members (including the mayor); compensation

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<sup>2</sup> Fla. Const., art. II, ss. 8(a) and 8(i)(2) (2021).

<sup>3</sup> Fla. Const., art. II, s. 8(a) (2021).

<sup>4</sup> Fla. Const., art. II, s. 8(i)(1) (2021).

<sup>5</sup> Section 112.3144, F.S. (2021)

<sup>6</sup> *Id.*

<sup>7</sup> Rule 34-8.002, F.A.C.

claims judges; Duval County superintendent of schools; Florida Housing Finance Corporation Board members; Florida Prepaid College Board members; and each expressway authority, transportation authority (except the Jacksonville Transportation Authority), bridge authority, or toll authority created pursuant to ch. 348 or 343, F.S., or any other general law.<sup>8</sup>

Reporting individuals are required to file CE Form 6 annually with the Commission by July 1.<sup>9</sup> Additionally, candidates for a constitutional office are required to make a full and public disclosure of their financial interests at the time of qualifying.<sup>10</sup>

Beginning January 1, 2022, all disclosures filed with the Commission must be filed electronically through an electronic filing system that is created and maintained by the Commission as provided in s. 112.31446, Florida Statutes.<sup>11</sup>

### **Statement of Financial Interests (CE Form 1)**

While elected local officers<sup>12</sup> may have the same spending power as county commissioners and other public officers that are required to file CE Form 6, state law only requires local officers to file CE Form 1, which is less detailed form of financial disclosure.<sup>13</sup> Elected local officers, municipal officers, and candidates for such offices, must file this form at the time of qualifying and annually by July 1.<sup>14</sup>

Those who are required to file a statement of financial interests pursuant to s. 112.3145, F.S., are required to disclose primary sources of income (other than from his or her public position), secondary sources of income (in certain circumstances), real property (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified businesses.<sup>15</sup> The law permits a filer to report the required interests based upon one of two thresholds. First, the filer may calculate whether an interest is required to be reported based upon whether that interest exceeds a specified percentage of his or her net worth. This is referred to as the “comparative (percentage) threshold.” Because the law permits a filer to choose which threshold he or she is going to use, the CE Form 1 promulgated by the Commission requires the filer to identify the threshold used by checking a box. The statute does not expressly require this designation on the CE Form 1. The CE Form 1 is due July 1. A grace period is provided until September 1 of each year.<sup>16</sup>

A candidate for an office subject to the CE Form 1 filing requirement must file a CE Form 1 with his or her qualifying papers.<sup>17</sup> If the candidate qualifies prior to the annual CE Form 1 filing deadline, the CE Form 1 that is filed with the candidate’s qualifying papers will satisfy the

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<sup>8</sup> Rule 34-8.003, F.A.C., [http://www.ethics.state.fl.us/Documents/Forms/Form1.html#form\\_6](http://www.ethics.state.fl.us/Documents/Forms/Form1.html#form_6) (last accessed on 11/19/2021).

<sup>9</sup> Rule 34-8.002, F.A.C.

<sup>10</sup> Section 99.061(5), F.S. (2021).

<sup>11</sup> Section 112.3144, F.S. (2021).

<sup>12</sup> Section 112.3145(1) (2021).

<sup>13</sup> Section 112.3145(3), F.S. (2021); *see also* Rule 34-8.202, F.A.C.

<sup>14</sup> Rule 34-8.202, F.A.C.

<sup>15</sup> Section 112.3145(3), F.S. (2021).

<sup>16</sup> Section 112.3145(8)(c), F.S. (2021).

<sup>17</sup> Section 112.3145(2)(a), F.S. (2021).

annual disclosure requirement.<sup>18</sup> If the candidate qualifies after the annual CE Form 1 filing deadline, the candidate must file a copy of the CE Form 1 with the qualifying officer.<sup>19</sup> General law also requires an individual subject to the CE Form 1 filing requirement to file a final disclosure statement within 60 days after leaving his or her public position.<sup>20</sup> The final disclosure must cover the period between January 1 of the year in which the person leaves and the last day of office or employment, unless the person takes another public position for which a CE Form 1 or CE Form 6 is required within the 60-day period, or if the person is otherwise required to file CE Form 1.<sup>21</sup>

Beginning January 1, 2022, all statements filed with the Commission must be filed electronically through an electronic filing system that is created and maintained by the commission as provided in s. 112.31446, F.S.<sup>22</sup>

### **Candidate Qualifications Respecting Financial Disclosures**

Under the Election Code, at the time of qualifying for office, each candidate for a constitutional office must file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation, and a candidate for any other office, including local elective office, must file a statement of financial interests.<sup>23</sup> When a candidate has qualified for office prior to the deadline to file an annual financial disclosure, the disclosure filed with the candidate's qualifying papers is deemed to satisfy the annual disclosure requirement.<sup>24</sup>

Beginning in January 1, 2022, under the Code of Ethics, an incumbent in an elective office or a candidate holding another position subject to an annual filing requirement who has filed his or her annual disclosure electronically, may submit a copy of the disclosure filed with the Commission, or a verification or receipt of the filing, with the officer before whom he or she qualifies.<sup>25</sup> A candidate not subject to an annual filing requirement does not file with the Commission, but may complete and print the appropriate disclosure form to file with the officer before whom he or she qualifies.<sup>26</sup>

Under the Elections Code, in order for a candidate to be qualified, the filing officer must receive the full and public disclosure or statement of financial interests.<sup>27</sup> This provision is inconsistent with the verification or receipt provisions in the Code of Ethics. If the filing officer receives qualifying papers during the qualifying period prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of any missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying.<sup>28</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Section 112.3145(2)(b), F.S. (2021).

<sup>21</sup> *Id.*

<sup>22</sup> Section 112.3145(2)(3), F.S. (2021).

<sup>23</sup> Section 99.061, F.S. (2021).

<sup>24</sup> Sections 112.3144(3), 112.3145(2)(a), F.S. (2021).

<sup>25</sup> Sections 112.3144(4), 112.3145(2)(c), F.S. (2021).

<sup>26</sup> Sections 112.3144(4), 112.3145(2)(c), F.S. (2021).

<sup>27</sup> Section 99.061(7)(a)5, F.S. (2021).

<sup>28</sup> Section 99.061(7)(b), F.S. (2021).

### Procedures on Complaints of Violations

Section 112.324, F.S., authorizes the Commission to investigate alleged violations of the ethics code upon a written complaint executed on a form prescribed by the Commission and signed under oath or affirmation by any person, or upon receipt of a written referral of a possible violation from the Governor, the Department of Law Enforcement, a state attorney, or a United States Attorney.<sup>29</sup> The Commission may dismiss any complaint or referral at any stage of disposition if it determines that the violation alleged is a *de minimis* violation attributable to inadvertent or unintentional error.<sup>30</sup> The Commission is not authorized to dismiss complaints alleging *de minimis* violations pursuant to ss. 112.3144 or 112.3145, F.S.<sup>31</sup>

### III. Effect of Proposed Changes:

The bill adds candidates qualifying for constitutional or other elective office subject to annual CE Form 6 filing requirement to the list of those that must file CE Form 6 prior to running for the office. It clarifies in the Elections Code that candidates may submit a verification or receipt of electronic filing if they have filed an annual financial disclosure electronically with the Commission.

The bill delays the date that all full and public disclosures must be filed electronically with the Commission to January 1, 2023. The bill requires the Commission to only accept full and public disclosures filed in paper through December 31, 2022. The bill also requires the Commission to post a notice on its website informing filers that paper forms must be used for full and public disclosures through December 31, 2022. The notice may not be removed until January 1, 2023.

The bill requires the Commission to accept federal income tax returns, financial statements, and other forms or attachments filed with the disclosures for the purposes of reporting income.

Beginning on January 1, 2023, the bill requires the following local officers to file the more detailed CE Form 6 annually: mayors; city commissioners; elected members of a city council; town council; village council; or other governing body of a city, town or village; and city, county, town, or village, as well as members of the Commission and the Election Commission.

The bill revises the definition of “local officers” to conform to the changes proposed in the bill.

The bill delays the requirement to file statements of financial interests electronically with the Commission to January 1, 2024. The Commission can only accept a statement of financial interests submitted in paper form through December 31, 2023. The bill also requires the Commission to post a notice on its website informing filers that paper forms must be used for filing a statement of financial interests through December 31, 2023. The notice may not be removed until January 1, 2024.

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<sup>29</sup> Section 112.324(1)(b), F.S., (2021).

<sup>30</sup> Section 112.324(11), F.S. (2021), a *de minimis* violation is any violation that is unintentional and not material in nature.

<sup>31</sup> *Id.*

The bill authorizes the Commission to dismiss any complaint or referral relating to financial disclosures filed pursuant to ss. 112.3144 or 112.3145, F.S., if it determines the violation alleged is a *de minimis* violation attributable to inadvertent or unintentional error.

The bill directs the Commission to post a notice on its website instructing filers to redact personal identification information in their filings.

The bill authorizes the Commission to adopt emergency rules to implement the provisions of the bill. The emergency rules adopted are effective for six months after adoption and may be renewed during the pendency of permanent rules addressing the subject of the emergency rules.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires mayors; city commissioners; elected members of a city council; town council; village council; or other governing body of a city, town or village; and city, county, town, or village managers to file the more detailed CE Form 6 in lieu of the currently required CE 1. The expense to the Commission associated with mailing these

individuals a CE Form 6 instead of a CE Form 1 is indeterminate, but likely insignificant and absorbable within current resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 99.061, 112.31446, 112.3144, 112.3145, and 112.324 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Rules on February 10, 2022:**

- Allows filers to continue using their federal income tax returns as a part of their financial disclosures.
- Delays the requirement to file disclosures electronically by one year.
- Maintains the current staggered implementation timelines with CE Form 6 filers beginning to use the electronic filing system January 1, 2023 and CE Form 1 filers beginning January 1, 2024.
- Requires the Commission to publish a notice on their forms instructing filers to redact their filings to remove personal identification information.
- Requires members of the Ethics Commission and Elections Commission to file a Form 6.
- Clarifies in the Election Code that candidates may submit a verification or receipt of electronic filing to the Department of State if they have filed an annual financial disclosure electronically with the Commission.
- Authorizes the Commission adopt emergency rules to implement the provisions of the bill. The emergency rules are effective for six months.

**CS by Ethics and Elections on November 30, 2021:**

- The CS excludes mayors; city commissioners; elected members of a city council; town council; village council; or other governing body of a city, town or village; and city, county, town, or village managers from the term “local officer” as used in s. 112.3145(2)(b), F.S., which addresses their obligation to file a CE Form 1. The aforementioned “local officers” must still comply with the other obligations in s. 112.3145, F.S.

B. Amendments:

None.

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

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The Committee on Rules (Brodeur) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Effective April 1, 2022, subsection (5) and  
paragraph (a) of subsection (7) of section 99.061, Florida  
Statutes, are amended to read:

99.061 Method of qualifying for nomination or election to  
federal, state, county, or district office.—

(5) At the time of qualifying for office, each candidate  
for a constitutional office and each candidate for other



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elective office subject to an annual filing requirement under s. 112.3144 shall file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a), and a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. 112.3145. A candidate who is subject to an annual filing requirement under s. 112.3144 may submit a verification or receipt of electronic filing pursuant to s. 112.3144(4). A candidate who is subject to an annual filing requirement under s. 112.3145 may file a verification or receipt of electronic filing pursuant to s. 112.3145(2)(c) unless the candidate is required to file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution or pursuant to this subsection.

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. A properly executed check drawn upon the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. If a candidate's check is returned by the bank for any reason, the filing officer must ~~shall~~ immediately notify the candidate and the candidate has ~~shall have~~ until the end of qualifying to pay the fee with a cashier's check purchased from funds of the



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41 campaign account. Failure to pay the fee as provided in this  
42 subparagraph disqualifies ~~shall disqualify~~ the candidate.

43 2. The candidate's oath required by s. 99.021, which must  
44 contain the name of the candidate as it is to appear on the  
45 ballot; the office sought, including the district or group  
46 number if applicable; and the signature of the candidate, which  
47 must be verified under oath or affirmation pursuant to s.  
48 92.525(1) (a).

49 3. If the office sought is partisan, the written statement  
50 of political party affiliation required by s. 99.021(1) (b); or  
51 if the candidate is running without party affiliation for a  
52 partisan office, the written statement required by s.  
53 99.021(1) (c).

54 4. The completed form for the appointment of campaign  
55 treasurer and designation of campaign depository, as required by  
56 s. 106.021.

57 5. The full and public disclosure or statement of financial  
58 interests required by subsection (5). A public officer who has  
59 filed the full and public disclosure or statement of financial  
60 interests with the Commission on Ethics or the supervisor of  
61 elections before ~~prior to~~ qualifying for office may file a copy  
62 of that disclosure at the time of qualifying or a verification  
63 or receipt of electronic filing as provided in subsection (5).

64 Section 2. Effective January 1, 2023, paragraph (a) of  
65 subsection (1) of section 112.3144, Florida Statutes, is  
66 amended, and paragraph (d) is added to that subsection, to read:

67 112.3144 Full and public disclosure of financial  
68 interests.—

69 (1) (a) An officer who is required by s. 8, Art. II of the



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State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year, or any other person required by law to file a disclosure under this section, shall file that disclosure with the Florida Commission on Ethics. Additionally, an officer who is required to file a full and public disclosure of his or her financial interests under this part and complete annual ethics training pursuant to s. 112.3142 must certify on his or her full and public disclosure of financial interests that he or she has completed the required training.

(d) The following local officers must comply with the financial disclosure requirement of s. 8, Art. II of the State Constitution and this section:

1. Mayors.

2. City Commissioners.

3. Elected members of a city council; town council; village council; or other governing body of a city, town, or village.

4. City, county, town, or village managers.

Section 3. Effective January 1, 2023, paragraph (b) of subsection (2) of section 112.3145, Florida Statutes, is amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(2)

(b) Each state or local officer, except local officers specified in s. 112.3144(1)(d), and each specified state employee shall file a statement of financial interests no later than July 1 of each year. Each state officer, local officer, and specified state employee shall file a final statement of



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financial interests within 60 days after leaving his or her public position for the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure under this section or s. 8, Art. II of the State Constitution or otherwise is required to file full and public disclosure or a statement of financial interests for the final disclosure period. Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days after ~~from~~ the date of appointment or, in the case of a specified state employee, after ~~from~~ the date on which the employment begins, except that any person whose appointment is subject to confirmation by the Senate shall file before ~~prior to~~ confirmation hearings or within 30 days after ~~from~~ the date of appointment, whichever comes first.

Section 4. Paragraphs (d) and (e) of subsection (2) and paragraph (c) of subsection (8) of section 112.3145, Florida Statutes, are amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(2)

(d) State officers and specified state employees shall file their statements of financial interests with the commission. Through December 31, 2022, local officers shall file their statements of financial interests with the supervisor of elections of the county in which they permanently reside. Through December 31, 2022, local officers who do not permanently



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reside in any county in this ~~the~~ state shall file their statements of financial interests with the supervisor of elections of the county in which their agency maintains its headquarters. Persons seeking to qualify as candidates for local public office shall file their statements of financial interests with the officer before whom they qualify.

(e) Beginning January 1, 2023, a statement of financial interests and a final statement of financial interests, and any amendments thereto, or any other form required by this section, except any statement of a candidate who is not subject to an annual filing requirement, ~~all statements filed with the commission~~ must be filed electronically through an electronic filing system ~~that is~~ created and maintained by the commission as provided in s. 112.31446.

(8) Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections. The commission and each supervisor of elections shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(c) Not later than August 1 of each year, the commission and each supervisor of elections shall determine which persons required to file a statement of financial interests in their respective offices have failed to do so and shall send delinquency notices to these persons. Through December 31, 2022, delinquency notices must be sent by certified mail, return receipt requested. Each notice must state that a grace period is in effect until September 1 of the current year; that no investigative or disciplinary action based upon the delinquency



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will be taken by the agency head or commission if the statement is filed by September 1 of the current year; that, if the statement is not filed by September 1 of the current year, a fine of \$25 for each day late will be imposed, up to a maximum penalty of \$1,500; for notices distributed by a supervisor of elections, that he or she is required by law to notify the commission of the delinquency; and that, if upon the filing of a sworn complaint the commission finds that the person has failed to timely file the statement within 60 days after September 1 of the current year, such person will also be subject to the penalties provided in s. 112.317. Beginning January 1, 2023, notice required under this paragraph:

1. May not be sent by certified mail.

2. Must be delivered by e-mail and must be redelivered on a weekly basis by e-mail as long as the person remains delinquent.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to financial disclosures; amending s. 99.061, F.S.; revising qualification requirements for certain candidates for office; amending s. 112.3144, F.S.; requiring certain officers to certify that they have completed ethics training; requiring specified local officers to file a full and public disclosure of



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186 financial interests; amending s. 112.3145, F.S.;  
187 exempting specified local officers from certain  
188 financial disclosure requirements; requiring certain  
189 local officers to file their statements of financial  
190 interests with a specified supervisor of elections  
191 until a specified date; requiring certain documents to  
192 be filed electronically after a specified date;  
193 requiring certain delinquency notices to be sent by  
194 certified mail until a specified date; prohibiting  
195 certain delinquency notices from being sent by  
196 certified mail after a specified date; providing  
197 effective dates.





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The Committee on Rules (Brodeur) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (5) and paragraph (a) of subsection  
(7) of section 99.061, Florida Statutes, are amended to read:

99.061 Method of qualifying for nomination or election to  
federal, state, county, or district office.—

(5) At the time of qualifying for office, each candidate  
for a constitutional office and each candidate for other  
elective office subject to an annual filing requirement under s.



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112.3144 shall file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a), and a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. 112.3145. A candidate subject to an annual filing requirement under s. 112.3144 may submit a verification or receipt of electronic filing pursuant to s. 112.3144(4). A candidate subject to an annual filing requirement under s. 112.3145 may file a verification or receipt of electronic filing pursuant to s. 112.3145(2)(c) unless the candidate is required to file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution or this subsection.

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. A properly executed check drawn upon the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. If a candidate's check is returned by the bank for any reason, the filing officer must ~~shall~~ immediately notify the candidate, and the candidate has ~~shall have~~ until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this



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subparagraph disqualifies ~~shall disqualify~~ the candidate.

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1) (a).

3. If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1) (b); or if the candidate is running without party affiliation for a partisan office, the written statement required by s. 99.021(1) (c).

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

5. The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections before ~~prior to~~ qualifying for office may file a copy of that disclosure at the time of qualifying or a verification or receipt of electronic filing as provided in subsection (5).

Section 2. Paragraph (a) of subsection (1), subsection (2), paragraph (c) of subsection (6), paragraphs (a) and (c) of subsection (7), and subsection (8) of section 112.3144, Florida Statutes, are amended, and paragraphs (d) and (e) are added to subsection (1) of that section, to read:

112.3144 Full and public disclosure of financial interests.—



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(1)(a) An officer ~~who is~~ required by s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year, or any other person required by law to file a disclosure under this section, shall file that disclosure with the Florida Commission on Ethics. Additionally, an officer ~~who is~~ required to file a full and public disclosure of his or her financial interests under this part and to complete annual ethics training pursuant to s. 112.3142 must certify on his or her full and public disclosure of financial interests that he or she has completed the required training.

(d) The following local officers must comply with the financial disclosure requirements of s. 8, Art. II of the State Constitution and this section:

1. Mayors.

2. City commissioners.

3. Elected members of a city council; town council; village council; or other governing body of a city, town, or village.

4. City, county, town, or village managers.

(e) Each member of the commission and the Florida Elections Commission must comply with the financial disclosure requirements of s. 8, Art. II of the State Constitution and this section.

(2) Beginning January 1, 2023 ~~2022~~, all disclosures filed with the commission must be filed electronically through an electronic filing system that is created and maintained by the commission as provided in s. 112.31446. Through December 31, 2022, the commission must accept disclosures filed either in paper form or filed electronically through the electronic filing



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99 system. The commission shall post a notice on its website  
100 informing filers that paper forms will be accepted for filing  
101 through December 31, 2022. The commission may not remove the  
102 notice until January 1, 2023.

103 (6)

104 (c) Each separate source and amount of income which exceeds  
105 \$1,000 must be identified. For the purposes of reporting income,  
106 the commission shall accept federal income tax returns,  
107 financial statements, and other forms or attachments showing  
108 sources of income ~~Beginning January 1, 2022, a federal income~~  
109 ~~tax return may not be used for purposes of reporting income, and~~  
110 ~~the commission may not accept a federal income tax return or a~~  
111 ~~copy thereof.~~

112 (7)(a) Beginning January 1, 2022, a filer may not include  
113 in a filing to the commission ~~a federal income tax return or a~~  
114 ~~copy thereof;~~ a social security number; a bank, mortgage, or  
115 brokerage account number; a debit, charge, or credit card  
116 number; a personal identification number; or a taxpayer  
117 identification number. If a filer includes such information in  
118 his or her filing, the information may be made available as part  
119 of the official records of the commission available for public  
120 inspection and copying unless redaction is requested by the  
121 filer. The commission is not liable for the release of social  
122 security numbers or bank account, debit, charge, or credit card  
123 numbers included in a filing to the commission if the filer has  
124 not requested redaction of such information.

125 (c) The commission must conspicuously post a notice, in  
126 substantially the following form, in the instructions for the  
127 electronic filing system specifying that:



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1. Any filer submitting information through the electronic filing system may not include ~~a federal income tax return or a copy thereof~~; a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; or a taxpayer identification number in any filing unless required by law.

2. Information submitted through the electronic filing system may be open to public inspection and copying.

3. Any filer has a right to request that the commission redact from his or her filing any social security number, bank account number, or debit, charge, or credit card number contained in the filing. Such request must be made in writing and delivered to the commission. The request must specify the information to be redacted and the specific section or sections of the disclosure in which it was included.

(8) Forms or fields of information for compliance with the full and public disclosure requirements of s. 8, Art. II of the State Constitution shall be prescribed by the commission. The commission shall allow a filer to include attachments or other supporting documentation when filing a disclosure. The commission shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(a) Not later than May 1 of each year, the commission shall prepare a current list of the names, e-mail addresses, and physical addresses of and the offices held by every person required to file full and public disclosure annually by s. 8, Art. II of the State Constitution, or other state law. Each unit of government shall assist the commission in compiling the list by providing to the commission not later than February 1 of each



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year the name, e-mail address, physical address, and name of the office held by such person within the respective unit of government as of December 31 of the preceding year.

(b) Not later than June 1 of each year, the commission shall distribute a copy of the form prescribed for compliance with full and public disclosure and a notice of the filing deadline to each person on the list. Beginning January 1, 2023 ~~2022~~, ~~no~~ paper forms will not be provided. The notice required under this paragraph and instructions for electronic submission of the form and any accompanying attachments must be delivered by e-mail.

(c) Not later than August 1 of each year, the commission shall determine which persons on the list have failed to file full and public disclosure and shall send delinquency notices to such persons. Each notice must state that a grace period is in effect until September 1 of the current year. Beginning January 1, 2023 ~~2022~~, the notice required under this paragraph must be delivered by e-mail and must be redelivered on a weekly basis by e-mail as long as a person remains delinquent.

(d) Disclosures must be received by the commission not later than 5 p.m. of the due date. However, any disclosure that is postmarked by the United States Postal Service by midnight of the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, constitutes proof of mailing in a timely manner. Beginning January 1, 2023 ~~2022~~, upon request of the filer, the commission must provide verification to the filer



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that the commission has received the filed disclosure.

(e) Beginning January 1, 2023 ~~2022~~, a written declaration, as provided for under s. 92.525(2), accompanied by an electronic signature satisfies the requirement that the disclosure be sworn.

(f) Any person who is required to file full and public disclosure of financial interests and whose name is on the commission's list, and to whom notice has been sent, but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however this \$1,500 limitation on automatic fines does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline and a complaint is filed, as provided in s. 112.324. The commission must provide by rule the grounds for waiving the fine and the procedures by which each person whose name is on the list and who is determined to have not filed in a timely manner will be notified of assessed fines and may appeal. The rule must provide for and make specific the following:

1. The amount of the fine due is based upon the earliest of the following:

- a. When a statement is actually received by the office.
- b. When the statement is postmarked.
- c. When the certificate of mailing is dated.
- d. When the receipt from an established courier company is dated.

2. Upon receipt of the disclosure statement or upon accrual of the maximum penalty, whichever occurs first, the commission shall determine the amount of the fine which is due and shall notify the delinquent person. The notice must include an





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215 explanation of the appeal procedure under subparagraph 3. Such  
216 fine must be paid within 30 days after the notice of payment due  
217 is transmitted, unless appeal is made to the commission pursuant  
218 to subparagraph 3. The moneys shall be deposited into the  
219 General Revenue Fund.

220       3. Any reporting person may appeal or dispute a fine, based  
221 upon unusual circumstances surrounding the failure to file on  
222 the designated due date, and may request and is entitled to a  
223 hearing before the commission, which may waive the fine in whole  
224 or in part for good cause shown. Any such request must be in  
225 writing and received by the commission within 30 days after the  
226 notice of payment due is transmitted. In such a case, the  
227 reporting person must, within the 30-day period, notify the  
228 person designated to review the timeliness of reports in writing  
229 of his or her intention to bring the matter before the  
230 commission. For purposes of this subparagraph, "unusual  
231 circumstances" does not include the failure to monitor an e-mail  
232 account or failure to receive notice if the person has not  
233 notified the commission of a change in his or her e-mail  
234 address.

235       (g) Any person subject to the annual filing of full and  
236 public disclosure under s. 8, Art. II of the State Constitution,  
237 or other state law, whose name is not on the commission's list  
238 of persons required to file full and public disclosure is not  
239 subject to the fines or penalties provided in this part for  
240 failure to file full and public disclosure in any year in which  
241 the omission occurred, but nevertheless is required to file the  
242 disclosure statement.

243       (h) The notification requirements and fines of this



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subsection do not apply to candidates or to the first filing required of any person appointed to elective constitutional office or other position required to file full and public disclosure, unless the person's name is on the commission's notification list and the person received notification from the commission. The appointing official shall notify such newly appointed person of the obligation to file full and public disclosure by July 1. The notification requirements and fines of this subsection do not apply to the final filing provided for in subsection (10).

(i) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such fine to a collection agent as provided in s. 17.20.

Section 3. Subsections (4), (5), and (6) are added to section 112.31445, Florida Statutes, to read:

112.31445 Electronic filing system; full and public disclosure of financial interests.—

(4) The commission shall publish a notice on the electronic filing system instructing filers to redact a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; or a taxpayer identification number in their filings.

(5) The commission shall post a notice on the main webpage



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of the electronic filing system informing filers that paper forms will be accepted for filing through December 31, 2022, in accordance with s. 112.3144(2). The commission may not remove the notice until January 1, 2023.

(6) The electronic filing system must allow a filer to include attachments or other supporting documentation when submitting a disclosure through the system.

Section 4. Paragraph (f) is added to subsection (2) of section 112.31446, Florida Statutes, to read:

112.31446 Electronic filing system for financial disclosure.—

(2) By January 1, 2022, the commission shall procure and test an electronic filing system. At a minimum, the electronic filing system must:

(f) Allow a filer to include attachments or other supporting documentation when submitting a disclosure through the system.

Section 5. Paragraphs (b), (d), and (e) of subsection (2), paragraphs (a) and (c) of subsection (4), and paragraphs (b) and (c) of subsection (8) of section 112.3145, Florida Statutes, are amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(2)

(b) Each state or local officer, except local officers specified in s. 112.3144(1)(d), and each specified state employee shall file a statement of financial interests no later than July 1 of each year. Each state officer, local officer, and specified state employee shall file a final statement of



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financial interests within 60 days after leaving his or her public position for the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure under this section or s. 8, Art. II of the State Constitution or otherwise is required to file full and public disclosure or a statement of financial interests for the final disclosure period. Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days after ~~from~~ the date of appointment or, in the case of a specified state employee, after ~~from~~ the date on which the employment begins, except that any person whose appointment is subject to confirmation by the Senate shall file before ~~prior to~~ confirmation hearings or within 30 days after ~~from~~ the date of appointment, whichever comes first.

(d) State officers and specified state employees shall file their statements of financial interests with the commission. Through December 31, 2022, local officers shall file their statements of financial interests with the supervisor of elections of the county in which they permanently reside. Through December 31, 2022, local officers who do not permanently reside in any county in this ~~the~~ state shall file their statements of financial interests with the supervisor of elections of the county in which their agency maintains its headquarters. Persons seeking to qualify as candidates for local public office shall file their statements of financial interests with the officer before whom they qualify.



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(e) Beginning January 1, 2023, a statement of financial interests and a final statement of financial interests, and any amendments thereto, or any other form required by this section, except any statement of a candidate who is not subject to an annual filing requirement, all statements filed with the  
~~commission~~ must be filed electronically through an electronic filing system ~~that is~~ created and maintained by the commission as provided in s. 112.31446. Through December 31, 2022, the commission must accept from filers who file with the commission a statement of financial interests, a final statement of financial interests, and any amendments thereto or any other form required by this section submitted in paper form and may accept such statements, amendments, or other forms filed electronically. The commission shall post a notice on its website informing filers who file with the commission that paper forms will be accepted for filing through December 31, 2022. The commission may not remove the notice until January 1, 2023.

(4)(a) Beginning January 1, 2023, a filer may not include in a filing to the commission ~~a federal income tax return or a copy of thereof;~~ a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; or a taxpayer identification number. If a filer includes such information in his or her filing, the information may be made available as part of the official records of the commission available for public inspection and copying unless redaction is requested by the filer. The commission is not liable for the release of social security numbers, bank account numbers, or debit, charge, or credit card numbers included in a filing to the commission if



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the filer has not requested redaction of the information.

(c) The commission must conspicuously post a notice, in substantially the following form, in the instructions for the electronic filing system specifying that:

1. Any filer submitting information through the electronic filing system may not include ~~a federal income tax return or a copy thereof~~; a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; or a taxpayer identification number in any filing unless required by law.

2. Information submitted through the electronic filing system may be open to public inspection and copying.

3. Any filer has a right to request that the commission redact from his or her filing any social security number, bank account number, or debit, charge, or credit card number contained in the filing. Such request must be made in writing and delivered to the commission. The request must specify the information to be redacted and the specific section or sections of the disclosure in which it was included.

(8) Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections. The commission and each supervisor of elections shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(b) Not later than June 1 of each year, the commission and each supervisor of elections, as appropriate, shall distribute a copy of the form prescribed for compliance with subsection (3) and a notice of all applicable disclosure forms and filing



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deadlines to each person required to file a statement of financial interests. Beginning January 1, 2023, ~~no~~ paper forms will not be provided. The notice required under this paragraph and instructions for electronic submission must be delivered by e-mail.

(c) Not later than August 1 of each year, the commission and each supervisor of elections shall determine which persons required to file a statement of financial interests in their respective offices have failed to do so and shall send delinquency notices to these persons. Through December 31, 2022, delinquency notices must be sent by certified mail, return receipt requested. Each notice must state that a grace period is in effect until September 1 of the current year; that no investigative or disciplinary action based upon the delinquency will be taken by the agency head or commission if the statement is filed by September 1 of the current year; that, if the statement is not filed by September 1 of the current year, a fine of \$25 for each day late will be imposed, up to a maximum penalty of \$1,500; for notices distributed by a supervisor of elections, that he or she is required by law to notify the commission of the delinquency; and that, if upon the filing of a sworn complaint the commission finds that the person has failed to timely file the statement within 60 days after September 1 of the current year, such person will also be subject to the penalties provided in s. 112.317. Beginning January 1, 2023, notice required under this paragraph:

1. May not be sent by certified mail.

2. Must be delivered by e-mail and must be redelivered on a weekly basis by e-mail as long as the person remains delinquent.



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Section 6. Paragraph (a) of subsection (11) of section 112.324, Florida Statutes, is amended to read:

112.324 Procedures on complaints of violations and referrals; public records and meeting exemptions.—

(11) (a) Notwithstanding subsections (1)-(8), the commission may dismiss any complaint or referral at any stage of disposition if it determines that the violation that is alleged or has occurred is a de minimis violation attributable to inadvertent or unintentional error. In determining whether a violation was de minimis, the commission shall consider whether the interests of the public were protected despite the violation. ~~This subsection does not apply to complaints or referrals pursuant to ss. 112.3144 and 112.3145.~~

Section 7. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to financial disclosures; amending s. 99.061, F.S.; revising qualification requirements for certain candidates; amending s. 112.3144, F.S.; requiring specified local officers to file a full and public disclosure of financial interests; requiring members of the Commission on Ethics and the Florida Elections Commission to file a full and public disclosure of financial interests; revising the date by which full and public disclosure of financial





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interests must be filed electronically; requiring the Commission on Ethics to accept disclosures in either paper or electronic form through a specified date; requiring the commission to post a specified notice on its website for a certain timeframe; requiring the commission to accept federal income tax returns, financial statements, and other forms or attachments showing sources of income for a specified purpose; deleting the prohibition on including a federal income tax return or a copy thereof for certain filings; revising the date by which paper forms will no longer be provided; revising the date by which certain notices must be delivered electronically; revising the date by which the commission must provide verification of receiving a disclosure, upon the request of the filer; revising the date by which a written declaration satisfies the condition that the disclosure be sworn; amending s. 112.31445, F.S.; requiring the commission to publish a specified notice regarding electronic filing to filers; requiring the commission to post a specified notice regarding paper forms for a certain timeframe; providing an additional specification for the electronic filing of full and public disclosures; amending s. 112.31446, F.S.; revising minimum requirements for the electronic filing system; amending s. 112.3145, F.S.; exempting specified local officers from filing a statement of financial interests to conform to changes made by the act; requiring certain local officers to file their



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statements of financial interests with a specified supervisor of elections until a specified date; requiring the electronic filing of certain documents after a specified date; requiring the commission to accept statements of financial interests, final statements of financial interests, and any amendments thereto, or any other forms submitted in paper form until a specified date; authorizing such financial statements, amendments, or other forms to be filed electronically; requiring the commission to post a specified notice on its website for a certain timeframe; removing the prohibition on including a federal income tax return or a copy thereof in a filing; requiring certain delinquency notices to be sent by certified mail until a specified date; prohibiting certain delinquency notices from being sent by certified mail after a specified date; amending s. 112.324, F.S.; authorizing the commission to dismiss financial disclosure complaints alleging de minimis violations; providing an effective date.



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LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 02/10/2022 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Brodeur) recommended the following:

**Senate Substitute for Amendment (318288) (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Effective January 1, 2023, subsection (5) and  
paragraph (a) of subsection (7) of section 99.061, Florida  
Statutes, are amended to read:

99.061 Method of qualifying for nomination or election to  
federal, state, county, or district office.—

(5) At the time of qualifying for office, each candidate



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for a constitutional office and each candidate for other  
elective office subject to an annual filing requirement under s.  
112.3144 shall file a full and public disclosure of financial  
interests pursuant to s. 8, Art. II of the State Constitution,  
which must be verified under oath or affirmation pursuant to s.  
92.525(1)(a), and a candidate for any other office, including  
local elective office, shall file a statement of financial  
interests pursuant to s. 112.3145. A candidate subject to an  
annual filing requirement under s. 112.3144 may submit a  
verification or receipt of electronic filing pursuant to s.  
112.3144(4). A candidate subject to an annual filing requirement  
under s. 112.3145 may file a verification or receipt of  
electronic filing pursuant to s. 112.3145(2)(c) unless the  
candidate is required to file a full and public disclosure of  
financial interests pursuant to s. 8, Art. II of the State  
Constitution or this subsection.

(7)(a) In order for a candidate to be qualified, the  
following items must be received by the filing officer by the  
end of the qualifying period:

1. A properly executed check drawn upon the candidate's  
campaign account payable to the person or entity as prescribed  
by the filing officer in an amount not less than the fee  
required by s. 99.092, unless the candidate obtained the  
required number of signatures on petitions pursuant to s.  
99.095. The filing fee for a special district candidate is not  
required to be drawn upon the candidate's campaign account. If a  
candidate's check is returned by the bank for any reason, the  
filing officer must ~~shall~~ immediately notify the candidate, and  
the candidate has ~~shall have~~ until the end of qualifying to pay



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the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph disqualifies ~~shall disqualify~~ the candidate.

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

3. If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b); or if the candidate is running without party affiliation for a partisan office, the written statement required by s. 99.021(1)(c).

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

5. The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections before ~~prior to~~ qualifying for office may file a copy of that disclosure at the time of qualifying or a verification or receipt of electronic filing as provided in subsection (5).

Section 2. Paragraph (a) of subsection (1), subsection (2), paragraph (c) of subsection (6), paragraphs (a) and (c) of subsection (7), and subsection (8) of section 112.3144, Florida Statutes, are amended to read:

112.3144 Full and public disclosure of financial



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interests.—

(1)(a) An officer ~~who is~~ required by s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year, or any other person required by law to file a disclosure under this section, shall file that disclosure with the Florida Commission on Ethics. Additionally, an officer ~~who is~~ required to file a full and public disclosure of his or her financial interests under this part and to complete annual ethics training pursuant to s. 112.3142 must certify on his or her full and public disclosure of financial interests that he or she has completed the required training.

(2) Beginning January 1, 2023 ~~2022~~, all disclosures filed with the commission must be filed electronically through an electronic filing system that is created and maintained by the commission as provided in s. 112.31446. Through December 31, 2022, the commission may only accept disclosures filed in paper form. The commission shall post a notice on its website informing filers that paper forms must be used for filing through December 31, 2022. The commission may not remove the notice until January 1, 2023.

(6)

(c) Each separate source and amount of income which exceeds \$1,000 must be identified. For the purposes of reporting income, the commission shall accept federal income tax returns, financial statements, and other forms or attachments showing sources of income ~~Beginning January 1, 2022, a federal income tax return may not be used for purposes of reporting income, and the commission may not accept a federal income tax return or a~~



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99 ~~copy thereof.~~

100 (7)(a) Beginning January 1, 2022, a filer may not include  
101 in a filing to the commission ~~a federal income tax return or a~~  
102 ~~copy thereof~~; a social security number; a bank, mortgage, or  
103 brokerage account number; a debit, charge, or credit card  
104 number; a personal identification number; or a taxpayer  
105 identification number. If a filer includes such information in  
106 his or her filing, the information may be made available as part  
107 of the official records of the commission available for public  
108 inspection and copying unless redaction is requested by the  
109 filer. The commission is not liable for the release of social  
110 security numbers or bank account, debit, charge, or credit card  
111 numbers included in a filing to the commission if the filer has  
112 not requested redaction of such information.

113 (c) The commission must conspicuously post a notice, in  
114 substantially the following form, in the instructions for the  
115 electronic filing system specifying that:

116 1. Any filer submitting information through the electronic  
117 filing system may not include ~~a federal income tax return or a~~  
118 ~~copy thereof~~; a social security number; a bank, mortgage, or  
119 brokerage account number; a debit, charge, or credit card  
120 number; a personal identification number; or a taxpayer  
121 identification number in any filing unless required by law.

122 2. Information submitted through the electronic filing  
123 system may be open to public inspection and copying.

124 3. Any filer has a right to request that the commission  
125 redact from his or her filing any social security number, bank  
126 account number, or debit, charge, or credit card number  
127 contained in the filing. Such request must be made in writing



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and delivered to the commission. The request must specify the information to be redacted and the specific section or sections of the disclosure in which it was included.

(8) Forms or fields of information for compliance with the full and public disclosure requirements of s. 8, Art. II of the State Constitution shall be prescribed by the commission. The commission shall allow a filer to include attachments or other supporting documentation when filing a disclosure. The

commission shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(a) Not later than May 1 of each year, the commission shall prepare a current list of the names, e-mail addresses, and physical addresses of and the offices held by every person required to file full and public disclosure annually by s. 8, Art. II of the State Constitution, or other state law. Each unit of government shall assist the commission in compiling the list by providing to the commission not later than February 1 of each year the name, e-mail address, physical address, and name of the office held by such person within the respective unit of government as of December 31 of the preceding year.

(b) Not later than June 1 of each year, the commission shall distribute a copy of the form prescribed for compliance with full and public disclosure and a notice of the filing deadline to each person on the list. Beginning January 1, 2023 ~~2022~~, ~~no~~ paper forms will not be provided. The notice required under this paragraph and instructions for electronic submission of the form and any accompanying attachments must be delivered by e-mail.

(c) Not later than August 1 of each year, the commission





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shall determine which persons on the list have failed to file full and public disclosure and shall send delinquency notices to such persons. Each notice must state that a grace period is in effect until September 1 of the current year. Beginning January 1, 2023 ~~2022~~, the notice required under this paragraph must be delivered by e-mail and must be redelivered on a weekly basis by e-mail as long as a person remains delinquent.

(d) Disclosures must be received by the commission not later than 5 p.m. of the due date. However, any disclosure that is postmarked by the United States Postal Service by midnight of the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, constitutes proof of mailing in a timely manner. Beginning January 1, 2023 ~~2022~~, upon request of the filer, the commission must provide verification to the filer that the commission has received the filed disclosure.

(e) Beginning January 1, 2023 ~~2022~~, a written declaration, as provided for under s. 92.525(2), accompanied by an electronic signature satisfies the requirement that the disclosure be sworn.

(f) Any person who is required to file full and public disclosure of financial interests and whose name is on the commission's list, and to whom notice has been sent, but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however this \$1,500 limitation on automatic fines does not limit the civil penalty that may be imposed if the statement is filed more than 60 days



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after the deadline and a complaint is filed, as provided in s. 112.324. The commission must provide by rule the grounds for waiving the fine and the procedures by which each person whose name is on the list and who is determined to have not filed in a timely manner will be notified of assessed fines and may appeal. The rule must provide for and make specific the following:

1. The amount of the fine due is based upon the earliest of the following:

- a. When a statement is actually received by the office.
- b. When the statement is postmarked.
- c. When the certificate of mailing is dated.
- d. When the receipt from an established courier company is dated.

2. Upon receipt of the disclosure statement or upon accrual of the maximum penalty, whichever occurs first, the commission shall determine the amount of the fine which is due and shall notify the delinquent person. The notice must include an explanation of the appeal procedure under subparagraph 3. Such fine must be paid within 30 days after the notice of payment due is transmitted, unless an appeal is made to the commission pursuant to subparagraph 3. The moneys shall be deposited into the General Revenue Fund.

3. Any reporting person may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the commission, which may waive the fine in whole or in part for good cause shown. Any such request must be in writing and received by the commission within 30 days after the notice of payment due is transmitted. In such a case, the



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reporting person must, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission. For purposes of this subparagraph, "unusual circumstances" does not include the failure to monitor an e-mail account or failure to receive notice if the person has not notified the commission of a change in his or her e-mail address.

(g) Any person subject to the annual filing of full and public disclosure under s. 8, Art. II of the State Constitution, or other state law, whose name is not on the commission's list of persons required to file full and public disclosure is not subject to the fines or penalties provided in this part for failure to file full and public disclosure in any year in which the omission occurred, but nevertheless is required to file the disclosure statement.

(h) The notification requirements and fines of this subsection do not apply to candidates or to the first filing required of any person appointed to elective constitutional office or other position required to file full and public disclosure, unless the person's name is on the commission's notification list and the person received notification from the commission. The appointing official shall notify such newly appointed person of the obligation to file full and public disclosure by July 1. The notification requirements and fines of this subsection do not apply to the final filing provided for in subsection (10).

(i) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order



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of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such fine to a collection agent as provided in s. 17.20.

Section 3. Effective January 1, 2023, paragraphs (d) and (e) are added to subsection (1) of section 112.3144, Florida Statutes, to read:

112.3144 Full and public disclosure of financial interests.—

(1)

(d) The following local officers must comply with the financial disclosure requirements of s. 8, Art. II of the State Constitution and this section:

1. Mayors.

2. City commissioners.

3. Elected members of a city council; town council; village council; or other governing body of a city, town, or village.

4. City, county, town, or village managers.

(e) Each member of the commission and the Florida Elections Commission must comply with the financial disclosure requirements of s. 8, Art. II of the State Constitution and this section.

Section 4. Subsections (4), (5), and (6) are added to section 112.31445, Florida Statutes, to read:

112.31445 Electronic filing system; full and public disclosure of financial interests.—



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(4) The commission shall publish a notice on the electronic filing system instructing filers to redact a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; or a taxpayer identification number in their filings.

(5) The commission shall post a notice on the main webpage of the electronic filing system informing filers that that the electronic filing system will not accept any electronic filings until January 1, 2023, and that paper forms must be used through December 31, 2022, in accordance with s. 112.3144(2). The commission may not remove the notice until January 1, 2023.

(6) The electronic filing system must allow a filer to include attachments or other supporting documentation when submitting a disclosure through the system.

Section 5. Subsection (2) of section 112.31446, Florida Statutes, is amended to read:

112.31446 Electronic filing system for financial disclosure.—

(2) By January 1, 2022, the commission shall procure and test an electronic filing system. Upon the electronic filing system's implementation ~~At a minimum,~~ the electronic filing system must meet the following minimum requirements:

(a) Provide access through the Internet for the completion and submission of disclosures of financial interests, statements of financial interests, or any other form that is required under s. 112.3144 or s. 112.3145.

(b) Make filings available in a searchable format that is accessible by an individual using standard Internet-browsing software.



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(c) Issue a verification or receipt that the commission has received the submitted disclosure or statement.

(d) Provide security that prevents unauthorized access to the electronic filing system's functions or data.

(e) Provide a method for an attorney or a certified public accountant licensed in this state to complete the disclosure or statement and certify that he or she prepared the disclosure or statement in accordance with s. 112.3144 or s. 112.3145 and the instructions for completing the disclosure or statement, and that, upon his or her reasonable knowledge and belief, the information on the disclosure or statement is true and correct.

(f) Allow a filer to include attachments or other supporting documentation when submitting a disclosure or a statement through the system.

Section 6. Paragraphs (d) and (e) of subsection (2), paragraphs (a) and (c) of subsection (4), and paragraphs (b) and (c) of subsection (8) of section 112.3145, Florida Statutes, are amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(2)

(d) State officers and specified state employees shall file their statements of financial interests with the commission.

Through December 31, 2023, local officers shall file their statements of financial interests with the supervisor of elections of the county in which they permanently reside.

Through December 31, 2023, local officers who do not permanently reside in any county in this ~~the~~ state shall file their statements of financial interests with the supervisor of



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elections of the county in which their agency maintains its headquarters. Persons seeking to qualify as candidates for local public office shall file their statements of financial interests with the officer before whom they qualify.

(e) Beginning January 1, 2024 ~~2023~~, a statement of financial interests and a final statement of financial interests, and any amendments thereto, or any other form required by this section, except any statement of a candidate who is not subject to an annual filing requirement, ~~all statements filed with the commission~~ must be filed electronically through an electronic filing system ~~that is~~ created and maintained by the commission as provided in s. 112.31446. Through December 31, 2023, the commission may only accept from filers who file with the commission a statement of financial interests, a final statement of financial interests, and any amendments thereto or any other form required by this section submitted in paper form. The commission shall post a notice on its website informing filers who file with the commission that paper forms must be used for filing through December 31, 2023. The commission may not remove the notice until January 1, 2024.

(4) (a) Beginning January 1, 2023, a filer may not include in a filing to the commission ~~a federal income tax return or a copy of thereof;~~ a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; or a taxpayer identification number. If a filer includes such information in his or her filing, the information may be made available as part of the official records of the commission available for public



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inspection and copying unless redaction is requested by the filer. The commission is not liable for the release of social security numbers, bank account numbers, or debit, charge, or credit card numbers included in a filing to the commission if the filer has not requested redaction of the information.

(c) The commission must conspicuously post a notice, in substantially the following form, in the instructions for the electronic filing system specifying that:

1. Any filer submitting information through the electronic filing system may not include ~~a federal income tax return or a copy thereof~~; a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; or a taxpayer identification number in any filing unless required by law.

2. Information submitted through the electronic filing system may be open to public inspection and copying.

3. Any filer has a right to request that the commission redact from his or her filing any social security number, bank account number, or debit, charge, or credit card number contained in the filing. Such request must be made in writing and delivered to the commission. The request must specify the information to be redacted and the specific section or sections of the disclosure in which it was included.

(8) Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections. The commission and each supervisor of elections shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:





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(b) Not later than June 1 of each year, the commission and each supervisor of elections, as appropriate, shall distribute a copy of the form prescribed for compliance with subsection (3) and a notice of all applicable disclosure forms and filing deadlines to each person required to file a statement of financial interests. Beginning January 1, 2024 ~~2023~~, ~~no~~ paper forms will not be provided. The notice required under this paragraph and instructions for electronic submission must be delivered by e-mail.

(c) Not later than August 1 of each year, the commission and each supervisor of elections shall determine which persons required to file a statement of financial interests in their respective offices have failed to do so and shall send delinquency notices to these persons. Through December 31, 2023, delinquency notices must be sent by certified mail, return receipt requested. Each notice must state that a grace period is in effect until September 1 of the current year; that no investigative or disciplinary action based upon the delinquency will be taken by the agency head or commission if the statement is filed by September 1 of the current year; that, if the statement is not filed by September 1 of the current year, a fine of \$25 for each day late will be imposed, up to a maximum penalty of \$1,500; for notices distributed by a supervisor of elections, that he or she is required by law to notify the commission of the delinquency; and that, if upon the filing of a sworn complaint the commission finds that the person has failed to timely file the statement within 60 days after September 1 of the current year, such person will also be subject to the penalties provided in s. 112.317. Beginning January 1, 2024



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2023, notice required under this paragraph:

1. May not be sent by certified mail.

2. Must be delivered by e-mail and must be redelivered on a weekly basis by e-mail as long as the person remains delinquent.

Section 7. Effective January 1, 2023, paragraph (b) of subsection (2) of section 112.3145, Florida Statutes, is amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(2)

(b) Each state or local officer, except local officers specified in s. 112.3144(1)(d), and each specified state employee shall file a statement of financial interests no later than July 1 of each year. Each state officer, local officer, and specified state employee shall file a final statement of financial interests within 60 days after leaving his or her public position for the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure under this section or s. 8, Art. II of the State Constitution or otherwise is required to file full and public disclosure or a statement of financial interests for the final disclosure period. Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days after ~~from~~ the date of appointment or, in the case of a specified state employee, after ~~from~~ the date on which the employment begins, except that any person whose appointment is subject to confirmation by the



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Senate shall file before ~~prior to~~ confirmation hearings or within 30 days after ~~from~~ the date of appointment, whichever comes first.

Section 8. Paragraph (a) of subsection (11) of section 112.324, Florida Statutes, is amended to read:

112.324 Procedures on complaints of violations and referrals; public records and meeting exemptions.—

(11)(a) Notwithstanding subsections (1)-(8), the commission may dismiss any complaint or referral at any stage of disposition if it determines that the violation that is alleged or has occurred is a de minimis violation attributable to inadvertent or unintentional error. In determining whether a violation was de minimis, the commission shall consider whether the interests of the public were protected despite the violation. ~~This subsection does not apply to complaints or referrals pursuant to ss. 112.3144 and 112.3145.~~

Section 9. (1) The Commission on Ethics is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for adopting the form for the full and public disclosure of financial interests, and any related filing instructions and procedures, to implement the amendments made by this act.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of permanent rules addressing the subject of the emergency rules.

(3) This section expires January 1, 2023.

Section 10. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.



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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to financial disclosures; amending s.  
99.061, F.S.; revising qualification requirements for  
certain candidates; amending s. 112.3144, F.S.;  
revising the date by which full and public disclosure  
of financial interests must be filed electronically;  
requiring the Commission on Ethics to only accept  
disclosures in paper form through a specified date;  
requiring the commission to post a specified notice on  
its website for a certain timeframe; requiring the  
commission to accept federal income tax returns,  
financial statements, and other forms or attachments  
showing sources of income for a specified purpose;  
deleting the prohibition on including a federal income  
tax return or a copy thereof for certain filings;  
revising the date by which paper forms will no longer  
be provided; revising the date by which certain  
notices must be delivered electronically; revising the  
date by which the commission must provide verification  
of receiving a disclosure, upon the request of the  
filer; revising the date by which a written  
declaration satisfies the condition that the  
disclosure be sworn; requiring specified local  
officers to file a full and public disclosure of



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financial interests; requiring members of the  
Commission on Ethics and the Florida Elections  
Commission to file a full and public disclosure of  
financial interests; amending s. 112.31445, F.S.;  
requiring the commission to publish a specified notice  
regarding electronic filing to filers; requiring the  
commission to post a specified notice regarding paper  
forms for a certain timeframe; providing an additional  
specification for the electronic filing of full and  
public disclosures; amending s. 112.31446, F.S.;  
revising minimum requirements for the electronic  
filing system; amending s. 112.3145, F.S.; requiring  
certain local officers to file their statements of  
financial interests with a specified supervisor of  
elections until a specified date; requiring the  
electronic filing of certain documents after a  
specified date; requiring the commission to only  
accept statements of financial interests, final  
statements of financial interests, and any amendments  
thereto, or any other forms submitted in paper form  
until a specified date; requiring the commission to  
post a specified notice on its website for a certain  
timeframe; removing the future prohibition on  
including a federal income tax return or a copy  
thereof in a filing; revising the date by which paper  
forms will no longer be provided; requiring certain  
delinquency notices to be sent by certified mail until  
a specified date; prohibiting certain delinquency  
notices from being sent by certified mail after a



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534 specified date; exempting specified local officers  
535 from filing a statement of financial interests to  
536 conform to changes made by the act; amending s.  
537 112.324, F.S.; authorizing the commission to dismiss  
538 financial disclosure complaints alleging de minimis  
539 violations; authorizing the commission to adopt  
540 emergency rules for a specified purpose, subject to  
541 specified conditions; providing for expiration of the  
542 emergency rulemaking authority; providing effective  
543 dates.

By the Committee on Ethics and Elections; and Senator Brodeur

582-01371-22

2022510c1

A bill to be entitled

An act relating to financial disclosures for local officers; amending s. 112.3144, F.S.; requiring specified local officers to file a full and public disclosure of financial interests; amending s. 112.3145, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (1) of section 112.3144, Florida Statutes, to read:

112.3144 Full and public disclosure of financial interests.—

(1)

(d) The following local officers must comply with the financial disclosure requirements of s. 8, Art. II of the State Constitution and this section:

1. Mayors.

2. City commissioners.

3. Elected members of a city council; town council; village council; or other governing body of a city, town, or village.

4. City, county, town, or village managers.

Section 2. Paragraph (b) of subsection (2) of section 112.3145, Florida Statutes, is amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(2)

(b) Each state or local officer, except local officers

Page 1 of 2

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

582-01371-22

2022510c1

specified in s. 112.3144(1)(d), and each specified state employee shall file a statement of financial interests no later than July 1 of each year. Each state officer, local officer, and specified state employee shall file a final statement of financial interests within 60 days after leaving his or her public position for the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure under this section or s. 8, Art. II of the State Constitution or otherwise is required to file full and public disclosure or a statement of financial interests for the final disclosure period. Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days after ~~from~~ the date of appointment or, in the case of a specified state employee, after ~~from~~ the date on which the employment begins, except that any person whose appointment is subject to confirmation by the Senate shall file before ~~prior to~~ confirmation hearings or within 30 days after ~~from~~ the date of appointment, whichever comes first.

Section 3. This act shall take effect January 1, 2023.

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



The Florida Senate  
**Committee Agenda Request**

**To:** Senator Kathleen Passidomo, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** January 24, 2022

---

I respectfully request that **Senate Bill 510**, relating to **Financial Disclosures for Local Officers**, be placed on the:

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

A handwritten signature in black ink that reads "Jason Brodeur".

---

Senator Jason Brodeur  
Florida Senate, District 9



## **SB 510 Summary**

SB 510 requires the following local officers to file full and public disclosure of financial interests pursuant to the Florida Constitution: mayors, city commissioners, elected members of a city council, town council, village council, or other governing body of a city, town, or village, and city, county, town, or village managers. The bill revises the definition of “local officers” to conform to the changes proposed in the bill.

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

2-10-22

Meeting Date

Rules

Committee

510

Bill Number or Topic

3860248

Amendment Barcode (if applicable)

Name

Kerrie Stillman

Phone

488-7864

Address

325 John Knox Rd, Bldg E, Ste 200

Email

stillman.kerrie@leg.state.fl.us

Street

Tallahassee, FL

State

32303

Zip

Speaking:

☐

For

☐

Against

☒

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

Florida Commission  
on Ethics

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

2/10/22

Meeting Date

510

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Phillip Suderman

Phone

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

Americans for  
Prosperity

☐

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

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

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 644

INTRODUCER: Rules Committee; Regulated Industries Committee; Community Affairs Committee and Senator Brodeur

SUBJECT: Building Regulation

DATE: February 11, 2022

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------------|----------------|-----------|---------------|
| 1. | <u>Hunter</u>  | <u>Ryon</u>    | <u>CA</u> | <u>Fav/CS</u> |
| 2. | <u>Kraemer</u> | <u>Imhof</u>   | <u>RI</u> | <u>Fav/CS</u> |
| 3. | <u>Hunter</u>  | <u>Phelps</u>  | <u>RC</u> | <u>Fav/CS</u> |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 644 provides a number of revisions relating to building inspectors and plans reviewers licensure requirements and workforce availability. The bill also makes changes relating to transparency and efficiency for private providers and building officials under the alternative plans review and inspection process. The bill also addresses the issuance of building permits for demolition of certain single-family residences in coastal and flood zone areas.

The bill makes the following changes pertaining to building inspector and plans examiner licensure:

- Provides that a person may sit for the building inspector or plans examiner licensure test by completing a four-year internship with a private provider or private provider's firm and under the direct supervision of a certified building official.
- Requires the Florida Building Code Administrators and Inspectors Board (FBCAIB) to adopt a rule establishing that partial completion of an internship program may be transferred among local jurisdictions, private providers, and private provider firms.
- Prohibits the FBCAIB from issuing a provisional license with a special condition or requirement that such licensee be employed by a municipality, county, or other local government agency.

As it relates to private providers, the bill specifies that if a person uses a private provider, the local government must provide equal access to all permitting and inspection documents and

reports to the private provider, the owner, and the contractor. It also defines the “reasonable administrative fee” a local government may charge for using a private provider as the actual cost incurred.

The bill states that a local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish any single-family residential structure located in certain flood hazard areas according to Flood Insurance Rate Maps produced by the Federal Emergency Management Agency (FEMA) under certain circumstances.

The bill modifies the timeframe in which a building official must issue a certificate of occupancies or completion, and qualifies that those timelines begin after completion of all compliance documents and an applicant’s payment of all outstanding fees. The bill also provides that if a local building official does not provide a notice of deficiencies within these timeframes, the building permit is automatically deemed issued the next day, and the local building official must provide the permit applicant with the written certificate of occupancy or certificate of completion within 10 days.

According to the Department of Business and Professional Regulation (DBPR), the bill does not have a fiscal impact on state government.<sup>1</sup> See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2022.

## **II. Present Situation:**

### **The Florida Building Code**

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida’s minimum standards were met. Local governments could choose from four separate model codes. The state’s role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.<sup>2</sup>

In 1992, Hurricane Andrew demonstrated that Florida’s system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission’s recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all

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<sup>1</sup> See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 644* at p. 4 (Oct. 28, 2021) (on file with the Senate Committee on Regulated Industries).

<sup>2</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at [http://www.floridabuilding.org/fbc/publications/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited Jan. 26, 2022).

local codes on March 1, 2002.<sup>3</sup> The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.<sup>4</sup>

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act” (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>5</sup>

The Florida Building Commission was statutorily created to implement the Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The commission reviews several International Codes published by the International Code Council,<sup>6</sup> the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.<sup>7</sup>

### **Local Enforcement of the Florida Building Code**

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public’s health, safety, and welfare.<sup>8</sup>

Every local government must enforce the Building Code and issue building permits.<sup>9</sup> It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>10</sup>

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.<sup>11</sup> Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.<sup>12</sup>

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<sup>3</sup> *Id.*; DBPR, *Building Code Information System*, available at: <https://floridabuilding.org/c/default.aspx#> (last visited Jan. 26, 2022).

<sup>4</sup> *Id.*

<sup>5</sup> Section 553.72(1), F.S.

<sup>6</sup> The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Jan. 26, 2022).

<sup>7</sup> Sections 553.73, and 553.74, F.S.

<sup>8</sup> Section 553.72, F.S.

<sup>9</sup> Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>10</sup> Sections 125.56(4)(a), 553.79(1), F.S.

<sup>11</sup> Section 110 Seventh edition of the Florida Building Code (Building).

<sup>12</sup> Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, available at: <http://discover.pbcbgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%9393%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Jan. 26, 2022).

## **Building Code Administrators and Inspectors and Plans Examiners**

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (FBCAIB) within the DBPR. The FBCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate.<sup>13</sup>

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.<sup>14</sup>

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories in which the inspector has been licensed. The inspector categories are:<sup>15</sup>

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

During the 2020 Regular Session, the Legislature renamed the “one and two family dwelling inspector” to the “residential inspector” and expanded the scope of practice to include inspecting one-family, two-family, or three-family residences, and accessory use structures in connection therewith, for compliance with the building, plumbing, mechanical, accessibility, and electrical codes.<sup>16</sup>

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories in which the plans examiner has been licensed. The plans examiner categories are:<sup>17</sup>

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

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<sup>13</sup> Section 468.605, F.S.

<sup>14</sup> Section 468.603(2), F.S.

<sup>15</sup> Section 468.603(5), F.S.

<sup>16</sup> Ch. 2020-160, s. 19, Laws of Fla.

<sup>17</sup> Section 468.603(8), F.S.

The FBCAIB may also create voluntary certificates that licensed inspectors and plans examiners may obtain. A voluntary certificate is a limited certificate that allows a licensed inspector or plans examiner to inspect or examine plans for additional categories. Voluntary certificates are not available to people who are not licensed as an inspector, plans examiner, or construction contractor. The FBCAIB has created the following voluntary certificates:<sup>18</sup>

- Residential pool inspector;
- Commercial pool inspector;
- Roofing inspector;
- Modular inspector;
- Modular plans examiner; and
- Residential plans examiner.

In order to sit for the plans examiner or inspector exam a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:<sup>19</sup>

- Have four years of combined relevant experience;
- Have three years of combined postsecondary education and relevant experience;
- Have three years of combined technical education and relevant experience;
- Complete an approved cross-training program and have at least two years of experience;
- Hold a standard certificate issued by the FBCAIB or a firesafety inspector license; and
  - Have at least four years of relevant experience as an inspector or plans examiner;
  - Have a minimum of three years of experience in firesafety inspection, or firesafety plan review and completed a training program of not less than 100 hours in the new category sought;
  - Complete an approved training program of not less than 200 hours in inspection or plans review except for one-family and two-family dwelling training programs, which may not be less than 500 hours; or
- Complete a four-year internship certification program.

### **Internship Programs**

After the recession in 2008, Florida experienced a shortage of inspectors, plans examiners, and building officials on account of many of them being laid off. In response to the shortage, during the 2017 Regular Session, the Legislature created the four-year internship program as an additional way to obtain licensure as a plans examiner or inspector.<sup>20</sup> A person may sit for the plans examiner or inspector exam in all categories if the person is at least 18 years of age, is of good moral character, and completes an internship program. The requirements of the internship program are:<sup>21</sup>

- Completing a four-year internship as an inspector or plans examiner while employed full-time by a local government, under the direct supervision of a building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than one year;

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<sup>18</sup> See s. 468.609(10), F.S.; Fla. Admin. Code R. 61G19-6.016 (2021)

<sup>19</sup> Section 468.609(2), F.S.

<sup>20</sup> Ch. 2017-149, s. 5, Laws of Fla.

<sup>21</sup> Section 468.609(2), F.S.



- Passing an ICC administered examination in the license category sought;
- Passing the principles and practice examination before completing the internship program;
- Passing a FBCAIB-approved 40-hour code training course in the license category sought before completing the internship; and
- Obtaining a favorable recommendation from the supervising building official after completion of the internship.

Current law requires the FBCAIB to establish by rule that partial completion of the internship program may be transferred between jurisdictions.<sup>22</sup>

Currently, the four-year internship program only applies to a person employed full-time by a local government, and does not apply if the person is employed full-time with a private entity that provides building inspection and/or plans review services.

### **Provisional Licensure**

A person who is qualified to sit for the building official, plans examiner, or inspector exam but has not taken the exam may be granted a provisional certificate by the FBCAIB. A provisional certificate allows a person to engage in the duties of a building official, inspector, or plans examiner. Provisional licenses are valid for two years, but may be renewed by the FBCAIB for just cause. A provisional license is not valid for more than three years. However, an applicant who is obtaining licensure as an inspector or plans examiner through an internship may apply to the FBCAIB for a provisional certificate that is valid for the duration of the internship.<sup>23</sup>

The FBCAIB may issue provisional certificates with special conditions or requirements including conditions or requirements relating to the place of employment of the applicant, the supervision of the applicant on a consulting or advisory basis, or any other conditions the FBCAIB deem necessary to protect the public safety and health.<sup>24</sup>

### **Private Providers**

In 2002, s. 553.791, F.S., was enacted to allow property owners and contractors to hire licensed building code officials, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.<sup>25</sup>

If an owner or contractor opts to use a private provider, the local government must calculate the cost savings to its building department and reduce the building permit fees accordingly.<sup>26</sup>

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<sup>22</sup> Section 468.609(10), F.S.

<sup>23</sup> Section 468.609, F.S.; Fla. Admin. Code R. 61G19-6.012 (2018).

<sup>24</sup> *Id.*

<sup>25</sup> Section 553.791(1)(n) and (3), F.S.

<sup>26</sup> Section 553.791(2)(b), F.S.

A local government may not charge a fee for building inspections when an owner or contractor uses a private provider, but it may charge a “reasonable administrative fee.”<sup>27</sup> However, current law does not specify what a “reasonable administrative” fee is.

A building official may audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official may deny a building permit or a request for a certificate of completion if the building construction or plans do not comply with the Building Code. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.<sup>28</sup>

When a property owner or a contractor elects to use a private provider, he or she must notify the building official, on a form adopted by the Florida Building Commission, at the time of the permit application or no less than two business days before the first or next scheduled inspection.<sup>29</sup>

A private provider who approves building plans must sign a sworn affidavit that the plans comply with the Building Code and the private provider is authorized to review the plans.<sup>30</sup> Upon receipt of a building permit application from a private provider, a building official has 20 business days to grant or deny the permit. Denying a permit automatically tolls the remaining 20 business days.<sup>31</sup>

Before a private provider performs building inspections, he or she must notify the building official of each inspection the business day before the inspection. A local building official may visit a building site as often as necessary to ensure the private provider is performing the required inspections. Construction work on a building may continue as long as the private provider passes each inspection and the private provider gives proper notice of each inspection to the building official.<sup>32</sup>

A private provider must post records of every inspection, including the results of the inspections, electronically or on the jobsite and provide the records to the local building official within two business days of posting the records.<sup>33</sup>

Upon completion of all required inspections, a private provider must give the building official a record of all the inspections, a request for a certificate of occupancy, and a sworn statement indicating compliance with the Building Code. Upon receipt, the building official has two business days to issue the certificate of completion or provide the permit applicant a notice of deficiencies.<sup>34</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Section 553.791(1), (14), and (19), F.S.

<sup>29</sup> Section 553.791(4)-(5), F.S.

<sup>30</sup> Section 553.791(6), F.S.

<sup>31</sup> Section 553.791(7), F.S.

<sup>32</sup> Section 553.791(9) and (18), F.S.

<sup>33</sup> Section 553.791(11), F.S.

<sup>34</sup> Section 553.791(11)-(13), F.S.

If the local building official does not provide a notice of the deficiencies within two business days, the request for a certificate of occupancy is deemed granted, and the local building official must issue the certificate of occupancy the next business day.<sup>35</sup>

### **Federal Emergency Management Agency Flood Maps**

The Federal Emergency Management Agency (FEMA) is an agency within the United States Department of Homeland Security. The FEMA coordinates responses to disasters within the United States. The FEMA provides resources and assistance to local and state authorities when a disaster overwhelms local response capacities.<sup>36</sup>

The FEMA is responsible for various services related to flood insurance, floodplain management, and flood mapping.<sup>37</sup> The FEMA provides flood hazard and risk data products to help set insurance rates for the National Flood Insurance Program (NFIP) and help guide local and state governments' flood mitigation actions.

### ***The National Flood Insurance Program***

The NFIP is a program created by the Congress of the United States in 1968 through the National Flood Insurance Act of 1968. The NFIP aims to share the risk of flood losses through flood insurance and reduce flood damage by restricting development within floodplains. The program enables property owners in participating communities to purchase insurance protection, administered by the government, against flooding losses. Participation in the NFIP is limited to communities that adopt adequate land use and control measures with effective enforcement provisions to reduce flood damages by restricting development in areas exposed to flooding.<sup>38</sup>

### ***Flood Insurance Rate Maps***

The NFIP insurance rates are correlated with the unique flooding risks of a geographic area. To facilitate the allocation of insurance rates, the FEMA prepares flood insurance rate maps (FIRM). A FIRM is an official map of a community within the United States that displays the floodplains, more explicitly particular hazard areas and risk premium zones, as delineated by the FEMA.<sup>39</sup>

FIRMs display areas that fall within the 100-year flood boundary, special flood hazard areas, and insurance risk zones. FIRMs are used to set insurance rates against the risk of flood and whether buildings are insurable at all against flood. Furthermore, towns and municipalities use FIRMs for local land use policy and zoning.<sup>40</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> See FEMA, *About Us*, at <https://www.fema.gov/about> (last visited Jan. 26, 2022).

<sup>37</sup> See FEMA, *Flood Map*, at <https://www.fema.gov/flood-maps> (last visited Jan. 26, 2022).

<sup>38</sup> FEMA, *Flood Insurance*, at: <https://www.fema.gov/flood-insurance> (last visited Jan 26, 2022).

<sup>39</sup> FEMA, *Flood Insurance Rate Map (FIRM)*, at <https://www.fema.gov/glossary/flood-insurance-rate-map-firm> (last visited Jan. 26, 2022).

<sup>40</sup> *Id.*

### **III. Effect of Proposed Changes:**

#### **Private Providers**

The bill amends s. 468.603, F.S., to state the term “private provider” has the same meaning as in s. 553.791(1)(n), F.S., which states the term means:

[A] person licensed as a building code administrator under part XII of chapter 468 [relating to Building Code Administrators and Inspectors], as an engineer under chapter 471 [relating to Engineering], or as an architect under chapter 481 [relating to Architecture, Interior Design, and Landscape Architecture]. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term “private provider” also includes a person who holds a standard certificate under part XII of chapter 468 [relating to Building Code Administrators and Inspectors].

#### **Building Inspector and Plans Examiner Licensure**

The bill amends s. 468.609 F.S., to expand licensing opportunities for building inspectors and plans examiners, by allowing a person to sit for the certification test upon completion of a four-year full-time internship as an inspector or plans examiner with a private provider or private provider’s firm that performs the services of a building code inspector or plans examiner, while under the direct supervision a certified building official. Current law allows such for internships while employed full-time with a local government.<sup>41</sup> The bill allows engineers and architects to give favorable recommendations to an intern after completion of the internship program.

The bill also directs the FBCAIB to adopt a rule establishing that partial completion of an internship program may be transferred among jurisdictions, private providers, and firms of private providers.

The bill addresses the special conditions or requirements the FBCAIB may impose when issuing provisional certificates for building officials, plans examiners, and building inspectors. The FBCAIB may continue to impose special conditions or requirements on a provisional certificate to protect the public safety and health, but it may not require an applicant to be employed by a municipality, county, or other local government agency.

The bill corrects a scrivener’s error by renaming the “one-family and two-family dwelling” training program to the “residential” training program to conform to changes made during the 2020 Regular Session.<sup>42</sup>

#### **Building Permits for Demolition**

The bill amends s. 553.79, F.S., to provide that a local government may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish and replace

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<sup>41</sup> See s. 468.609((2)(c)(7)).

<sup>42</sup> See ch. 2020-160, s. 19, Laws of Fla.

any single-family residential dwelling located in a coastal high hazard area, moderate flood zone, or special flood hazard area according to Florida Insurance Rate Maps produced by the Federal Emergency Management Agency (FEMA) in support of the National Flood Insurance Program (NFIP), if the lowest finished floor elevation of the dwelling is at or below the property's base flood elevation, pursuant to the Florida Building Code (Building Code) or local ordinance, or a higher base flood elevation if required by local ordinance. Such a demolition permit may only be reviewed administratively for compliance with the Building Code, and is not subject to additional land development regulations or a public hearing as a prerequisite for issuance of the permit.

Local governments may not impose additional regulatory requirements on the replacement of the demolished single-family residential dwelling which would not otherwise be applicable to a similarly situated vacant parcel, and may not penalize the owner for such demolition.

Under the bill, the new building permit provisions for demolition of eligible dwellings do not apply to any structure designated on the National Register of Historic Places; to any privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or to any privately owned single-family residential structure designated historic with the consent of its owner subsequent to such date.

### **Alternative Plans Review and Inspection**

The bill amends s. 553.791 F.S., to provide that if an owner or contractor retains a private provider for plans review or inspection services, the local government must provide equal access to all permitting and inspection documents and reports to the private provider, the owner, and the contractor if such access is provided by software that protects exempt records from disclosure.

The bill provides that the "reasonable administrative fee" authorized under current law to be charged by a local jurisdiction for using a private provider must be based on the cost that is actually incurred by the local jurisdiction, including the labor cost of the personnel providing the service, by the local jurisdiction or attributable to the local jurisdiction, for the clerical and supervisory assistance required, or both.

The bill modifies the timeframe in which a building official must issue a certificate of occupancy or certificate of completion, and qualifies that those timelines begin after completion of all compliance documents and an applicant's payment of all outstanding fees. A local building official must issue the certificate or identify deficiencies within 2 business days for single-family and 2-family dwellings and 10 business days for all other permits. Current law imposes a 2-day time frame for all permits. The bill also provides that if a local building official does not provide a notice of deficiencies within these timeframes, the building permit is automatically deemed issued the next day.

The bill provides that after the automatic issuance of a certificate of occupancy or certificate of completion, the local building official must provide the applicant with a written certificate within 10 days thereafter.

The bill includes technical drafting changes and conforming changes.

The bill provides for an effective date of July 1, 2022.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide for more availability of building inspectors and plans reviewers by providing additional opportunities for persons to qualify for licensure, which may also reduce construction costs and delays.

Private property owners may benefit from fewer regulatory requirements imposed by local governments for the demolition and replacement of single family residences located in a coastal high hazard area, moderate flood zone, or special flood hazard area as specified in the bill.

C. Government Sector Impact:

The bill may increase costs to local governments by requiring equal access to records for private providers, owners, and contractors under the alternative plans review and inspection process, however, any costs are likely minimal.

Additionally, the bill may result in a slight reduction of revenues to local governments by limiting the amount of an administrative fee a local government may charge when a permit holder uses the services of a private provider.

The Department of Business and Professional Regulation expects minimal impact to the agency, which can be absorbed with existing resources.<sup>43</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.603, 468.609, 553.791, and 553.79.

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<sup>43</sup> See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 644* at p. 6 (Oct. 28, 2021) (on file with the Senate Committee on Regulated Industries).

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Rules on February 10, 2022:**

The CS specifies that for the internship program for building inspectors and plans examiners, direct supervision must be done by a certified building official only. Relating to alternative plans review and inspections, the CS:

- Modifies the timeframe in which a local building official must issue a certificate of occupancy or certificate of compliance to an applicant or identify deficiencies.
- Specifies that the local building official's review of all compliance documents and the applicant's payment of all outstanding fees must be completed before the timeframe begins.
- Removes a provision in the bill whereby a building official may rescind a certificate of occupancy if the local official determines, with specific reasons, the applicant failed to adhere to the law.
- Restores current law to allow an applicant to resolve identified deficiencies by the building official.
- Modifies the provision requiring the local jurisdiction provide equal access of certain documents and reports to private providers.

**CS/CS by Regulated Industries on February 1, 2022:**

The CS revises the title of the bill to "Building Regulation."

**CS by Community Affairs on January 25, 2022:**

- Specifies that a person may complete a 4-year internship program at a private provider's firm while under the direct supervision of a certified building official or licensed engineer architect, and allows engineers and architects to give favorable recommendation after completion of the internship program;
- Provides that a local government may not prohibit or restrict a property owner to obtain a building permit to demolish any single-family residential structure located in certain flood hazard areas provided that the permit otherwise complies with applicable building code requirements; and
- Provides that a building official may rescind a certificate of occupancy or certificate of completion within 30 days after issuance for failure to comply, and must provide written notice to the applicant, private provider, and the fee owner. The notice must include reasons for rescinding the certificate and detail how the certificate can be reinstated. A private provider must have the opportunity to cure any deficiencies and resubmit the application.

**B. Amendments:**

None.





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The Committee on Rules (Brodeur) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 129 - 287  
and insert:  
under the direct supervision of a certified building official.  
Proof of graduation with a related vocational degree or college  
degree or of verifiable work experience may be exchanged for the  
internship experience requirement year-for-year, but may reduce  
the requirement to no less than 1 year.  
b. Has passed an examination administered by the  
International Code Council in the certification category sought.



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Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training course in the certification category sought before completing the internship certification program.

e. Has obtained a favorable recommendation from the supervising building official after completion of the internship certification program.

(7)

(c) The board shall provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements ~~relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters~~ as the board deems ~~may deem~~ necessary to protect the public safety and health. The board may not place a special condition or requirement on a provisional certificate with respect to the requirement of employment by a municipality, county, or other local governmental agency.

(d) A person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a person licensed as a ~~certified~~ building code administrator under this part ~~who holds a standard certification~~ and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a



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building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

(10)

(b) The board shall by rule establish:

1. Reciprocity of certification with any other state that requires an examination administered by the International Code Council.

2. That an applicant for certification as a building code inspector or plans examiner may apply for a provisional certificate valid for the duration of the internship period.

3. That partial completion of an internship program is transferable among jurisdictions, private providers, and firms of private providers ~~may be transferred between jurisdictions~~ on a form prescribed by the board.

4. That an applicant may apply for a standard certificate on a form prescribed by the board upon successful completion of an internship certification program.

5. That an applicant may apply for a standard certificate at least 30 days but ~~and~~ no more than 60 days before completing the internship certification program.

6. That a building code inspector or plans examiner who has standard certification may seek an additional certification in another category by completing an additional nonconcurrent 1-year internship program in the certification category sought and passing an examination administered by the International Code Council and a board-approved 40-hour code training course.

Section 3. Subsection (25) is added to section 553.79, Florida Statutes, to read:



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553.79 Permits; applications; issuance; inspections.-

(25) (a) A local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish any single-family residential structure located in a coastal high hazard area, moderate flood zone, or special flood hazard area according to Flood Insurance Rate Maps produced by the Federal Emergency Management Agency in support of the National Flood Insurance Program if the lowest finished floor elevation of such structure is at or below base flood elevation as established by the Florida Building Code, as amended, or a higher base flood elevation as may be required by local ordinance, whichever is higher, provided that such permit otherwise complies with all applicable Florida Building Code requirements.

(b) Demolition permits sought pursuant to this subsection may be reviewed only administratively for compliance with the Florida Building Code and may not be subject to any additional land development regulations or a public hearing as a requisite to issuance. In the event of such demolition, a local government may not impose additional regulatory requirements on the new single-family residential structure constructed in place of the demolished structure which would not otherwise be applicable to a similarly situated, vacant parcel; nor may the local government otherwise penalize the owner for such demolition.

(c) This subsection does not apply to any structure designated on the National Register of Historic Places; to any privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or to any privately owned single-family



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residential structure designated historic with the consent of  
its owner subsequent to such date.

Section 4. Paragraph (b) of subsection (2) and subsection  
(13) of section 553.791, Florida Statutes, are amended, and  
paragraph (c) is added to subsection (2) of that section, to  
read:

553.791 Alternative plans review and inspection.—

(2)

(b) If an owner or contractor retains a private provider  
for purposes of plans review or building inspection services,  
the local jurisdiction must reduce the permit fee by the amount  
of cost savings realized by the local enforcement agency for not  
having to perform such services. Such reduction may be  
calculated on a flat fee or percentage basis, or any other  
reasonable means by which a local enforcement agency assesses  
the cost for its plans review or inspection services. The local  
jurisdiction may not charge fees for building inspections if the  
fee owner or contractor hires a private provider to perform such  
services; however, the local jurisdiction may charge a  
reasonable administrative fee, which shall be based on the cost  
that is actually incurred, including the labor cost of the  
personnel providing the service, by the local jurisdiction or  
attributable to the local jurisdiction for the clerical and  
supervisory assistance required, or both.

(c) If an owner or a contractor retains a private provider  
for purposes of plans review or building inspection services,  
the local jurisdiction must provide equal access to all  
permitting and inspection documents and reports to the private  
provider, owner, and contractor if such access is provided by



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software that protects exempt records from disclosure.

(13) ~~(a) No more than 2 business days~~ After receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance or upon and approval of all other government approvals required by law, and after the completion of the local building official's review of all compliance documents and the payment of all outstanding fees, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections, no later than:

1. Two business days for permits related to single-family or two-family dwellings.

2. Ten business days for all other permits.

(b) If the local building official does not provide notice of the deficiencies within the applicable prescribed 2-day period under subparagraph (a)1. or subparagraph (a)2., the request for a certificate of occupancy or certificate of completion is automatically shall be deemed granted and deemed the certificate of occupancy or certificate of completion shall be issued as of by the local building official on the next business day. The local building official must provide the applicant with the written certificate of occupancy or certificate of completion within 10 days after it is automatically granted and issued. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit a corrected request for a certificate of occupancy or certificate



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of completion.

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

And the title is amended as follows:

Delete lines 28 - 38

and insert:

jurisdiction to provide equal access under certain  
circumstances to certain documents to a private  
provider, owner, and contractor; revising conditions  
that must be met before a local building official must  
issue a certificate of occupancy, a certificate of  
completion, or a certain notice; revising the  
timeframe for issuing such certificate or notice for  
certain permits; providing that a certificate of  
occupancy or certificate of completion is  
automatically granted and issued under certain  
circumstances; requiring the local building official  
to provide a written certificate of occupancy or  
certificate of completion within a specified timeframe  
after such certificate is automatically granted and  
issued; providing an effective date.



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The Committee on Rules (Brodeur) recommended the following:

**Senate Substitute for Amendment (719540) (with title amendment)**

Delete lines 129 - 288

and insert:

under the direct supervision of a certified building official.

Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year.

b. Has passed an examination administered by the





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International Code Council in the certification category sought. Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training course in the certification category sought before completing the internship certification program.

e. Has obtained a favorable recommendation from the supervising building official after completion of the internship certification program.

(7)

(c) The board shall provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements ~~relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters~~ as the board deems ~~may deem~~ necessary to protect the public safety and health. The board may not place a special condition or requirement on a provisional certificate with respect to the requirement of employment by a municipality, county, or other local governmental agency.

(d) A person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted and if such person is under the direct supervision of a person licensed as a ~~certified~~ building code administrator under this part ~~who holds a standard certification and~~ who has found such person qualified for a provisional certificate. Direct supervision and the



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determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

(10)

(b) The board shall by rule establish:

1. Reciprocity of certification with any other state that requires an examination administered by the International Code Council.

2. That an applicant for certification as a building code inspector or plans examiner may apply for a provisional certificate valid for the duration of the internship period.

3. That partial completion of an internship program is transferable among jurisdictions, private providers, and firms of private providers ~~may be transferred between jurisdictions~~ on a form prescribed by the board.

4. That an applicant may apply for a standard certificate on a form prescribed by the board upon successful completion of an internship certification program.

5. That an applicant may apply for a standard certificate at least 30 days but ~~and~~ no more than 60 days before completing the internship certification program.

6. That a building code inspector or plans examiner who has standard certification may seek an additional certification in another category by completing an additional nonconcurrent 1-year internship program in the certification category sought and passing an examination administered by the International Code Council and a board-approved 40-hour code training course.

Section 3. Subsection (25) is added to section 553.79,



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Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(25) (a) A local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish any single-family residential structure located in a coastal high hazard area, moderate flood zone, or special flood hazard area according to Flood Insurance Rate Maps produced by the Federal Emergency Management Agency in support of the National Flood Insurance Program if the lowest finished floor elevation of such structure is at or below base flood elevation as established by the Florida Building Code, as amended, or a higher base flood elevation as may be required by local ordinance, whichever is higher, provided that such permit otherwise complies with all applicable Florida Building Code requirements.

(b) Demolition permits sought pursuant to this subsection may be reviewed only administratively for compliance with the Florida Building Code and may not be subject to any additional land development regulations or a public hearing as a requisite to issuance. In the event of such demolition, a local government may not impose additional regulatory requirements on the new single-family residential structure constructed in place of the demolished structure which would not otherwise be applicable to a similarly situated, vacant parcel; nor may the local government otherwise penalize the owner for such demolition.

(c) This subsection does not apply to any structure designated on the National Register of Historic Places; to any privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or



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before January 1, 2022; or to any privately owned single-family residential structure designated historic with the consent of its owner subsequent to such date.

Section 4. Paragraph (b) of subsection (2) and subsection (13) of section 553.791, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

553.791 Alternative plans review and inspection.—

(2)

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services. The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee, which shall be based on the cost that is actually incurred, including the labor cost of the personnel providing the service, by the local jurisdiction or attributable to the local jurisdiction for the clerical and supervisory assistance required, or both.

(c) If an owner or a contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must provide equal access to all permitting and inspection documents and reports to the private



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provider, owner, and contractor if such access is provided by software that protects exempt records from disclosure.

(13) (a) ~~No more than 2 business days~~ After receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance or upon and approval of all other government approvals required by law, and after the completion of the local building official's review of all compliance documents and the payment of all outstanding fees, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections, no later than:

1. Two business days for permits related to single-family or two-family dwellings.

2. Ten business days for all other permits.

(b) If the local building official does not provide notice of the deficiencies within the applicable ~~prescribed 2-day~~ period under subparagraph (a)1. or subparagraph (a)2., the request for a certificate of occupancy or certificate of completion is automatically ~~shall be deemed~~ granted and deemed the certificate of occupancy or certificate of completion shall be issued as of by the local building official on the next business day. The local building official must provide the applicant with the written certificate of occupancy or certificate of completion within 10 days after it is automatically granted and issued. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit a



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corrected request for a certificate of occupancy or certificate of completion.

Section 5. (1) Before January 1, 2023, the Florida Building Commission shall adopt within the Florida Building Code regulations for the design and construction of, and the Department of Health shall adopt rules for the sanitation and safety of, swim-up bars at public swimming pools in this state. The department and commission shall work with swimming pool industry representatives to develop such regulations and rules to position this state as a national leader on design specifications, safety, operation, and public health relating to swim-up bars.

(2) This section shall take effect upon this act becoming a law.

Section 6. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete lines 28 - 38

and insert:

jurisdiction to provide equal access under certain circumstances to certain documents to a private provider, owner, and contractor; revising conditions that must be met before a local building official must issue a certificate of occupancy, a certificate of completion, or a certain notice; revising the



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timeframe for issuing such certificate or notice for  
certain permits; providing that a certificate of  
occupancy or certificate of completion is  
automatically granted and issued under certain  
circumstances; requiring the local building official  
to provide a written certificate of occupancy or  
certificate of completion within a specified timeframe  
after such certificate is automatically granted and  
issued; requiring the Florida Building Commission to  
adopt certain regulations within the Florida Building  
Code, and the Department of Health to adopt certain  
rules, relating to swim-up bars at public swimming  
pools; requiring the department and commission to work  
with swimming pool industry representatives when  
developing such regulations and rules; providing  
effective dates.

By the Committees on Regulated Industries; and Community Affairs; and Senator Brodeur

580-02614-22

2022644c2

1 A bill to be entitled  
 2 An act relating to building regulation; amending s.  
 3 468.603, F.S.; defining the term "private provider";  
 4 amending s. 468.609, F.S.; revising eligibility  
 5 requirements for a person applying to become certified  
 6 as a building code inspector or plans examiner;  
 7 revising the special conditions or requirements that  
 8 the Florida Building Code Administrators and  
 9 Inspectors Board may impose on provisional  
 10 certificates; revising circumstances under which a  
 11 person may perform the duties of a plans examiner or  
 12 building code inspector for a specified period;  
 13 revising a requirement for the board's rules relating  
 14 to the transferability of a partial completion of an  
 15 internship program; amending s. 553.79, F.S.;  
 16 prohibiting local laws, ordinances, or regulations  
 17 that prohibit or restrict a private property owner's  
 18 ability to obtain a building permit to demolish a  
 19 single-family residential structure located in certain  
 20 flood zones if certain conditions are met; specifying  
 21 restrictions on a local government's review of such  
 22 demolition permits and on certain actions by the local  
 23 government relating to the demolition; providing  
 24 applicability; amending s. 553.791, F.S.; specifying  
 25 the required basis for a certain administrative fee  
 26 charged by local jurisdictions relating to building  
 27 inspections by private providers; requiring the local  
 28 jurisdiction to provide access to certain documents to  
 29 a private provider, owner, and contractor; providing

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

580-02614-22

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30 that a certificate of occupancy or certificate of  
 31 completion is automatically granted and issued under  
 32 certain circumstances; requiring the local building  
 33 official to provide a written certificate of occupancy  
 34 or certificate of completion within a specified time;  
 35 providing construction; specifying and revising  
 36 procedures and requirements if the local building  
 37 official determines the applicant failed to adhere to  
 38 certain requirements; providing an effective date.  
 39  
 40 Be It Enacted by the Legislature of the State of Florida:  
 41  
 42 Section 1. Subsection (9) is added to section 468.603,  
 43 Florida Statutes, to read:  
 44 468.603 Definitions.—As used in this part:  
 45 (9) "Private provider" has the same meaning as in s.  
 46 553.791(1)(n).  
 47 Section 2. Paragraph (c) of subsection (2), paragraphs (c)  
 48 and (d) of subsection (7), and paragraph (b) of subsection (10)  
 49 of section 468.609, Florida Statutes, are amended to read:  
 50 468.609 Administration of this part; standards for  
 51 certification; additional categories of certification.—  
 52 (2) A person may take the examination for certification as  
 53 a building code inspector or plans examiner pursuant to this  
 54 part if the person:  
 55 (c) Meets eligibility requirements according to one of the  
 56 following criteria:  
 57 1. Demonstrates 4 years' combined experience in the field  
 58 of construction or a related field, building code inspection, or

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



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plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633, with a minimum of 3 years' verifiable full-time experience in firesafety inspection or firesafety plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board must ~~shall~~ accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a

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firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement ~~must shall~~ include proof of satisfactory completion of a training program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board must ~~shall~~ accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633 and:

a. Has at least 4 years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 4 years' verifiable full-time experience as a firesafety inspector licensed under ~~pursuant to~~ chapter 633.

b. Has satisfactorily completed a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for residential ~~one family and two-family dwelling~~ training programs, which must provide at

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least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while also employed full-time by a municipality, county, or other governmental jurisdiction, under the direct supervision of a certified building official. A person may also complete the internship certification program while employed full-time by a private provider or a private provider's firm that performs the services of a building code inspector or plans examiner, while under the direct supervision of the private provider who must be a certified building official or a person licensed as an engineer under chapter 471 or an architect under chapter 481. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year.

b. Has passed an examination administered by the International Code Council in the certification category sought. Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training course in the certification category sought before completing the internship certification program.

e. Has obtained a favorable recommendation from the

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supervising building official, engineer, or architect after completion of the internship certification program.

(7)

(c) The board shall provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements ~~relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters~~ as the board ~~deems may deem~~ necessary to protect the public safety and health. The board may not place a special condition or requirement on a provisional certificate with respect to the requirement of employment by a municipality, county, or other local government agency.

(d) A person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a person licensed as a certified building code administrator under this part ~~who holds a standard certification~~ and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

(10)

(b) The board shall by rule establish:

1. Reciprocity of certification with any other state that requires an examination administered by the International Code Council.

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2. That an applicant for certification as a building code inspector or plans examiner may apply for a provisional certificate valid for the duration of the internship period.

3. That partial completion of an internship program is transferable among jurisdictions, private providers, and firms of private providers ~~may be transferred between jurisdictions~~ on a form prescribed by the board.

4. That an applicant may apply for a standard certificate on a form prescribed by the board upon successful completion of an internship certification program.

5. That an applicant may apply for a standard certificate at least 30 days ~~but~~ and no more than 60 days before completing the internship certification program.

6. That a building code inspector or plans examiner who has standard certification may seek an additional certification in another category by completing an additional nonconcurrent 1-year internship program in the certification category sought and passing an examination administered by the International Code Council and a board-approved 40-hour code training course.

Section 3. Subsection (25) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(25) (a) A local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish any single-family residential structure located in a coastal high hazard area, moderate flood zone, or special flood hazard area according to Flood Insurance Rate Maps produced by the Federal Emergency Management Agency in support of the National Flood Insurance

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Program if the lowest finished floor elevation of such structure is at or below base flood elevation as established by the Florida Building Code, as amended, or a higher base flood elevation as may be required by local ordinance, whichever is higher, provided that such permit otherwise complies with all applicable Florida Building Code requirements.

(b) Demolition permits sought pursuant to this subsection may be reviewed only administratively for compliance with the Florida Building Code and may not be subject to any additional land development regulations or a public hearing as a requisite to issuance. In the event of such demolition, a local government may not impose additional regulatory requirements on the new single-family residential structure constructed in place of the demolished structure which would not otherwise be applicable to a similarly situated, vacant parcel; nor may the local government otherwise penalize the owner for such demolition.

(c) This subsection does not apply to any structure designated on the National Register of Historic Places; to any privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or to any privately owned single-family residential structure designated historic with the consent of its owner subsequent to such date.

Section 4. Paragraph (b) of subsection (2) and subsection (13) of section 553.791, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

553.791 Alternative plans review and inspection.—

(2)

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233 (b) If an owner or contractor retains a private provider  
 234 for purposes of plans review or building inspection services,  
 235 the local jurisdiction must reduce the permit fee by the amount  
 236 of cost savings realized by the local enforcement agency for not  
 237 having to perform such services. Such reduction may be  
 238 calculated on a flat fee or percentage basis, or any other  
 239 reasonable means by which a local enforcement agency assesses  
 240 the cost for its plans review or inspection services. The local  
 241 jurisdiction may not charge fees for building inspections if the  
 242 fee owner or contractor hires a private provider to perform such  
 243 services; however, the local jurisdiction may charge a  
 244 reasonable administrative fee, which shall be based on the cost  
 245 that is actually incurred, including the labor cost of the  
 246 personnel providing the service, by the local jurisdiction or  
 247 attributable to the local jurisdiction for the clerical and  
 248 supervisory assistance required, or both.

249 (c) If an owner or contractor retains a private provider  
 250 for purposes of plans review or building inspection services,  
 251 the local jurisdiction must provide equal access to all  
 252 permitting and inspection documents and reports to the private  
 253 provider, owner, and contractor.

254 (13) No more than 2 business days after receipt of a  
 255 request for a certificate of occupancy or certificate of  
 256 completion and the applicant's presentation of a certificate of  
 257 compliance and approval of all other government approvals  
 258 required by law, the local building official shall issue the  
 259 certificate of occupancy or certificate of completion or provide  
 260 a notice to the applicant identifying the specific deficiencies,  
 261 as well as the specific code chapters and sections. If the local

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262 building official does not provide notice of the deficiencies  
 263 within the prescribed 2-day period, the request for a  
 264 certificate of occupancy or certificate of completion is  
 265 ~~automatically shall be deemed granted and deemed the certificate~~  
 266 ~~of occupancy or certificate of completion shall be issued as of~~  
 267 ~~by the local building official on~~ the next business day. The  
 268 local building official must provide the applicant with the  
 269 written certificate of occupancy or certificate of completion  
 270 within 10 days after it is automatically granted and issued.  
 271 After the expiration of the 10-day period, the permit is deemed  
 272 closed. If the local building official determines the applicant  
 273 failed to adhere to this subsection, the local building official  
 274 may rescind the certificate of occupancy or certificate of  
 275 completion within 30 days after its issuance and must provide  
 276 written notice to the permit applicant and private provider, as  
 277 applicable, as well as the fee owner of the rescinded  
 278 certificate. The notice must include specific reasons for  
 279 rescinding the certificate and detail how the certificate can be  
 280 reinstated. The permit must then be reopened, and the private  
 281 provider shall have the opportunity to cure any deficiencies and  
 282 resubmit the application for certificate of occupancy or  
 283 certificate of completion ~~To resolve any identified~~  
 284 ~~deficiencies, the applicant may elect to dispute the~~  
 285 ~~deficiencies pursuant to subsection (14) or to submit a~~  
 286 ~~corrected request for a certificate of occupancy or certificate~~  
 287 ~~of completion.~~

288 Section 5. This act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kathleen Passidomo, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 1, 2022

---

I respectfully request that **Senate Bill 644**, relating to **Building Inspection Services**, be placed on the:

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

A handwritten signature in black ink that reads "Jason Brodeur". The signature is fluid and cursive, with the first name "Jason" and last name "Brodeur" clearly legible.

---

Senator Jason Brodeur  
Florida Senate, District 9

## **Bill Summary**

SB 644 provides a number of revisions relating to building inspectors and plans reviewers' licensure requirements and workforce availability. The bill also makes changes relating to transparency and efficiency for private providers and building officials under the alternative plans review and inspection process.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 706

INTRODUCER: Rules Committee; Education Committee; Community Affairs Committee; and Senator Perry

SUBJECT: School Concurrency

DATE: February 10, 2022

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------|----------------|-----------|---------------|
| 1. | Hackett  | Ryon           | CA        | <b>Fav/CS</b> |
| 2. | Palazesi | Bouck          | ED        | <b>Fav/CS</b> |
| 3. | Hackett  | Phelps         | RC        | <b>Fav/CS</b> |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 706 concerns school concurrency, the process by which local governments ensure school capacity is not outpaced by population increase created by development. Concurrency requirements are local laws stating that certain infrastructure must be in place and available to serve new development before the local government may allow new citizens to live in the new development.

The bill provides that school concurrency is deemed satisfied when the developer tenders a written legally binding commitment, rather than actually executes such commitment, to provide mitigation proportionate to the demand created by the development. A district school board must notify the local government that capacity is available for the development within 30 days after receipt of the developer's commitment.

The bill also provides that such mitigation paid by a developer, rather than being immediately directed toward a school capacity improvement, may be set aside and not spent until an appropriate improvement is identified.

The bill takes effect July 1, 2022.

## II. Present Situation:

### Concurrency

“Concurrency” is a phrase referring to a set of land use regulations requiring local governments to ensure that new development does not outstrip a local government’s ability to provide necessary services. Developments meet concurrency requirements when the local government has the infrastructure capacity to serve the new growth.

In essence, a concurrency requirement is a law stating that certain infrastructure must be in place and available to serve new development before the local government may allow new citizens to live in the new development.<sup>1</sup> For example, before a local government can approve a building permit to allow a new development, it must consult with its water suppliers to ensure adequate supplies to serve the new development will be available by the time citizens can move in.<sup>2</sup> Certain services are subject to concurrency statewide (sanitary sewer, solid waste, drainage, and potable water) while other services, such as public transportation or schools, may optionally be subjected to concurrency by a local government.<sup>3</sup>

### School Concurrency

The Legislature prescribes the methods and regulations controlling when public school concurrency is imposed by a local government.<sup>4</sup> Local governments must include principles, guidelines, standards, strategies, and acceptable levels of service based on data in their comprehensive plans<sup>5</sup> and school-related interlocal agreements.<sup>6</sup> Local governments and school boards work in conjunction to determine whether adequate school capacity will be available to accommodate the development.

School concurrency requires a local government to deny an application for new residential development if adequate school capacity will not be available or under construction within three years of approving the application.<sup>7</sup> Typically the level of service required to be maintained is expressed in terms of student capacity (the maximum number of students a facility is designed to accommodate), student stations (the area necessary for a student to engage in learning), gross square footage of facilities, and facility utilization, versus the total number of students in a district or designated area.<sup>8</sup> Level of service can be separated into tiers of acceptability, as well

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<sup>1</sup> Section 163.3180(2), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 163.3180(1), F.S.

<sup>4</sup> Section 163.3180(6), F.S.

<sup>5</sup> Local government comprehensive plans provide the policy foundation for local planning and land use decisions on capital improvements, conservation, intergovernmental coordination, recreation, open space, future land use, housing, transportation, coastal management (where applicable) and public facilities.

<sup>6</sup> Section 613.3180(6)(a), F.S.

<sup>7</sup> Section 613.3180(h), F.S.

<sup>8</sup> See, e.g., Florida Planning and Development Lab at Florida State University, *Recommendations for Implementing School Concurrency*, Dec. 2007, available at <https://fpdl.coss.fsu.edu/sites/g/files/imported/storage/original/application/90a0cefe399a0d8424ca33f8e03d1bf5.pdf> (last visited January 20, 2022).



as divided between different types of school- elementary, middle, high, and special purpose being the typical divisions.<sup>9</sup>

### **Concurrency Service Areas**

Local governments are encouraged, but not required, to apply school concurrency on a districtwide basis.<sup>10</sup> A local government choosing to enforce concurrency on a less than districtwide basis must delineate school attendance zones or concurrency service areas through an interlocal agreement with the school district and other participating governments.<sup>11</sup> In order to implement attendance zones, a local government must first show that the utilization of school capacity is being used to its fullest capacity given transportation costs and other factors, and zones must be supported by data and analysis in the comprehensive plan.<sup>12</sup>

The Legislature has implemented some safeguards to encourage growth. Where school capacity is available on a districtwide basis but concurrency service areas constrict capacity, the local government must determine whether the needed capacity for a development exists in an adjacent service area.<sup>13</sup> If such coverage exists, the local government may not deny an application for the development, and must deduct the capacity from the adjacent area. Nonetheless, students from the development may not be required to attend school in the adjacent service area.<sup>14</sup>

### **Proportionate Share**

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development notwithstanding a failure to achieve and maintain the adopted level of service standards.<sup>15</sup> Proportionate share generally requires developers to contribute to costs, or build facilities, necessary to offset a new development's impacts.<sup>16</sup>

With respect to school concurrency applied by a local government, when a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a specified charter school is used as proportionate-share mitigation, the local government is required to credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by a local ordinance for the same need, on a dollar-for-dollar basis.<sup>17</sup>

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<sup>9</sup> Section 163.3180(6)(c), F.S.

<sup>10</sup> Section 163.3180(6)(f), F.S.

<sup>11</sup> Section 163.3180(f),(i), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 163.3180(f) 2. b., F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), retrieved from [http://www.cutr.usf.edu/pdf/DCA\\_TCBP%20Guide.pdf](http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf) (last visited March 18, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> Section 163.3180(6)(h)2.b., F.S.

**III. Effect of Proposed Changes:**

The bill amends s. 163.3180 (6), F.S., to provide school concurrency is deemed satisfied when the developer tenders a written legally binding, rather than actually executes, a commitment to provide mitigation proportionate to the demand created by the development. The district school board must notify the local government that capacity is available for the development within 30 days after receipt of the developer's commitment to provide school capacity.

The bill also provides that proportionate-share mitigation paid by a developer, rather than being immediately directed toward a school capacity improvement, may be set aside and not spent until an appropriate improvement is identified.

The bill takes effect July 1, 2022.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

Private sector development may benefit to the extent that the bill streamlines school concurrency requirements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.3180 Florida Statutes.

IX. Additional Information:

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

**CS/CS/CS by Rules on February 10, 2022:**

The committee substitute provides that the district school board must notify the local government that capacity is available for the development within 30 days after receipt of the developer's commitment to provide school capacity.

**CS/CS by Education on February 1, 2022:**

The committee substitute provides that school concurrency is deemed satisfied when the developer tenders a written legally binding commitment, rather than actually executes such commitment, to provide mitigation proportionate to the demand created by the development of a property.

**CS by Community Affairs on January 25, 2022:**

The committee substitute removes a provision requiring all counties which apply school concurrency to do so on a district-wide basis.

- B. Amendments:

None.



250496

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RS   | . |       |
| 02/10/2022 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Perry) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 49 - 52  
and insert:  
options described in sub-subparagraph a. The district school board shall issue a certificate of capacity for the development within 30 days after receipt of the developer's legally binding commitment ~~Options for proportionate share mitigation of impacts on public school facilities must be established in the comprehensive plan and the interlocal agreement pursuant to s. 163.31777.~~



250496

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

And the title is amended as follows:

Delete line 4

and insert:

school concurrency is deemed satisfied; requiring a  
district school board to issue a certificate of  
capacity for a development within a certain timeframe  
after receiving a certain commitment from the  
developer; deleting a requirement for certain  
proportionate-share impact mitigation options to be  
established in a comprehensive plan and interlocal  
agreement; specifying



863198

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 02/10/2022 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Perry) recommended the following:

**Senate Substitute for Amendment (250496) (with title amendment)**

Delete line 49  
and insert:  
options described in sub-subparagraph a. The district school board shall notify the local government that capacity is available for the development within 30 days after receipt of the developer's legally binding commitment. Options for

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



863198

12 And the title is amended as follows:

13 Delete line 4

14 and insert:

15 school concurrency is deemed satisfied; requiring a  
16 district school board to notify a local government  
17 that capacity is available for development within a  
18 certain timeframe; specifying

By the Committees on Education; and Community Affairs; and  
Senator Perry

581-02610-22

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A bill to be entitled

An act relating to school concurrency; amending s.  
163.3180, F.S.; revising provisions specifying when  
school concurrency is deemed satisfied; specifying  
that proportionate-share mitigation must be set aside  
and not spent if an improvement has not been  
identified; providing an effective date.

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

Section 1. Paragraph (h) of subsection (6) of section  
163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(6)

(h)1. In order to limit the liability of local governments,  
a local government may allow a landowner to proceed with  
development of a specific parcel of land notwithstanding a  
failure of the development to satisfy school concurrency, if all  
the following factors are shown to exist:

a. The proposed development would be consistent with the  
future land use designation for the specific property and with  
pertinent portions of the adopted local plan, as determined by  
the local government.

b. The local government's capital improvements element and  
the school board's educational facilities plan provide for  
school facilities adequate to serve the proposed development,  
and the local government or school board has not implemented  
that element or the project includes a plan that demonstrates  
that the capital facilities needed as a result of the project

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

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can be reasonably provided.

c. The local government and school board have provided a  
means by which the landowner will be assessed a proportionate  
share of the cost of providing the school facilities necessary  
to serve the proposed development.

2. If a local government applies school concurrency, it may  
not deny an application for site plan, final subdivision  
approval, or the functional equivalent for a development or  
phase of a development authorizing residential development for  
failure to achieve and maintain the level-of-service standard  
for public school capacity in a local school concurrency  
management system where adequate school facilities will be in  
place or under actual construction within 3 years after the  
issuance of final subdivision or site plan approval, or the  
functional equivalent. School concurrency is deemed satisfied  
when ~~if~~ the developer tenders a written, ~~executes a~~ legally  
binding commitment to provide mitigation proportionate to the  
demand for public school facilities to be created by actual  
development of the property, including, but not limited to, the  
options described in sub-subparagraph a. Options for  
proportionate-share mitigation of impacts on public school  
facilities must be established in the comprehensive plan and the  
interlocal agreement pursuant to s. 163.31777.

a. Appropriate mitigation options include the contribution  
of land; the construction, expansion, or payment for land  
acquisition or construction of a public school facility; the  
construction of a charter school that complies with the  
requirements of s. 1002.33(18); or the creation of mitigation  
banking based on the construction of a public school facility in

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exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

b. If the interlocal agreement and the local government comprehensive plan authorize a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for public educational facilities, on a dollar-for-dollar basis at fair market value. The credit must be based on the total impact fee assessed and not on the impact fee for any particular type of school.

c. Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the 5-year school board educational facilities plan or must

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be set aside and not spent until such an improvement has been identified that satisfies the demands created by the development in accordance with a binding developer's agreement.

3. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

Section 2. This act shall take effect July 1, 2022.

Page 4 of 4

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Kathleen Passidomo, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 3, 2022

---

I respectfully request that **CS/CS/Senate Bill #706**, relating to School Concurrency, be placed on the:

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

Statement of Intent:

Senate Bill 706 seeks to clarify existing law around school concurrency proportionate share mitigation agreements. The bill allows a proportionate share mitigation agreement to move forward if a developer in tenders a written binding commitment provide mitigation proportionate to the demand for public school facilities. Current law requires them to execute that agreement. The bill also adds that if a capacity project is not identified by the school district in their 5-year work plan the funds must be set aside until one is identified.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long horizontal line extending from the end.

---

Senator Keith Perry  
Florida Senate, District 8

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

2/10/22

Meeting Date

Rules

Committee

706

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Edward Briggs

Phone

850.955-3990

Address

922 Grand Central Ave.

Email

edward@arsa.com by 11-11-20

Street

Braun

City

FL

State

33511

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

## PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without  
compensation or sponsorship.



I am a registered lobbyist,  
representing:

Homes by West Bay



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

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

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

S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

2/10/22

Meeting Date

Rules

Committee

706

Bill Number or Topic

Amendment Barcode (if applicable)

Name Kari Hebrink

Phone \_\_\_\_\_

Address \_\_\_\_\_  
Street

Email \_\_\_\_\_

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

Florida Home Builders  
Association

☐ I am not a lobbyist, but received  
something of value for my appearance  
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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 772

INTRODUCER: Rules Committee; Children, Families, and Elder Affairs Committee; and Senators Diaz and Perry

SUBJECT: Protection of Victims and Witnesses

DATE: February 10, 2022

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Moody   | Cox            | CF        | <b>Fav/CS</b>    |
| 2. | Ravelo  | Cibula         | JU        | <b>Favorable</b> |
| 3. | Moody   | Phelps         | RC        | <b>Fav/CS</b>    |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 772 revises a statute governing the authority of a court to protect a child, a person having an intellectual disability, or a sexual offense victim from harm or abuse that may result from giving testimony in a court proceeding or at a deposition. Under existing law and court rules, courts have broad authority to fashion and order protections for victims and witnesses in these circumstances. But existing law identifies only a handful of examples of the kinds of protections that courts may require. The bill amends the definition of the term “sexual offense victim or witness” to define the term “sexual offense victim”, and removes reference to witnesses of sexual offense cases who are not minors or adults with intellectual disabilities from the protections provided for under s. 92.55, F.S.

The bill preserves, and perhaps slightly expands, the broad authority of a court to protect those who give testimony. However, the bill expressly requires the court to consider whether or how that authority should be exercised in a proceeding involving a violent or sexual offense when a party seeks to depose a child, a person having an intellectual disability, or a sexual offense victim. The new methods listed in the bill that a court may use to protect a vulnerable victim or witness include limiting the length and scope of a deposition, requiring a deposition to be taken by written questions, requiring a deposition to be taken in the presence of a judge or magistrate, and sealing the deposition records.

Additionally, the bill requires, for University of South Florida, in consultation with the Florida Alliance to End Human Trafficking, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data. This proposal must be submitted by October 1, 2022.

This bill does not appear to have a fiscal impact on state, county, or municipal governments. See V. Fiscal Impact Statement.

The bill is effective upon becoming law.

## **II. Present Situation:**

### **Vulnerable Victims and Witnesses**

Florida currently provides several protections relating to the protection of vulnerable victims and witnesses who are either underage or intellectually disabled, but does not specifically provide similar protections for other vulnerable victims or witnesses.

Section 92.55(2), F.S., authorizes the court, or any party, parent, guardian, attorney, guardian ad litem,<sup>1</sup> or other appointed advocate, to motion for any order to protect the following persons from severe emotional or mental harm due to the presence of the defendant, if the victim or witness (“vulnerable victim or witness”) is required to testify in open court:

- A victim or witness under the age of 18;
- A person with an intellectual disability;<sup>2</sup> or
- A victim or witness who was under the age of 18 at the time he or she was a victim of or witness to a sexual offense.<sup>3, 4</sup>

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<sup>1</sup> Section 39.820(1), F.S., states “guardian ad litem,” as referred to in any civil or criminal proceeding, includes the following: the Statewide Guardian Ad Litem Office, which includes circuit guardian ad litem programs; a duly certified volunteer, a staff member, a staff attorney, a contract attorney, or a pro bono attorney working on behalf of a guardian ad litem; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interest of a child in a proceeding as provided for by law, including, but not limited to ch. 39, F.S., who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

<sup>2</sup> Section 393.063, F.S., defines “intellectual disability” as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purpose of this definition, the term: (a) “adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, or community; (b) “Significantly subaverage general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intellectual test specified in the rules of the agency.

<sup>3</sup> Section 92.55(2), F.S.

<sup>4</sup> Section 92.55(1)(b), F.S., defines “sexual offense” as any offense which qualifies a person as a sexual predator under s. 775.21(4)(a)1., F.S., or a sexual offender under s. 943.0435(1)(h)1., F.S. Both the sexual predator and sexual offender provisions include s. 787.06(3)(b),(d),(f), or (g), F.S., as an enumerated offense that qualifies a person to such registration requirements. The specific provisions included relate to subjecting a person to specified types of human trafficking, including: using coercion for commercial sexual activity of an adult; using coercion for commercial sexual activity of an adult who is an unauthorized alien; for commercial sexual activity by the transferring or transporting a minor from outside this state to within the state; or for commercial sexual activity in which any minor or any person who is mentally defective or mentally incapacitated is involved. Section 787.06(2)(a), F.S. defines “coercion” as 1. Using or threatening to use force against a person; 2. Restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so; 3. Using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward the

The term “sexual offense victim or witness” is defined as a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense.<sup>5</sup>

Such orders must relate to the taking of testimony and include, but are not limited to:

- Interviewing or the taking of depositions as part of a civil or criminal proceeding;
- Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding;
- The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53<sup>6</sup> and 92.54, F.S.<sup>7</sup>

## ***Depositions***

### Criminal

In felony<sup>8</sup> criminal proceedings, after the filing of a charging document, the defendant may elect to participate in the discovery process, including the taking of depositions, by filing with the court and the prosecuting attorney a “Notice of Discovery.”<sup>9</sup> A party must give reasonable notice in writing to the each other party and make a good faith effort to coordinate a date, time, and location of the deposition with the other parties and witness to be deposed.<sup>10</sup> Except as provided in the Florida Rules of Criminal Procedure, the procedure for taking a deposition in a criminal proceeding is the same as that provided in the Florida Rules of Civil Procedure and s. 48.031, F.S.<sup>11, 12</sup>

The parties in criminal proceedings are allowed to take the deposition of any witness listed by the prosecutor as a Category A witness or listed by a co-defendant, but must show good cause for Category B witnesses or to take depositions in a misdemeanor or criminal traffic offense case.<sup>13</sup>

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liquidation of the debt; 4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or government identification document; 5. Causing or threatening to cause financial harm; 6. Enticing or luring a person by fraud or deceit; or 7. Providing a Schedule I or II controlled substance to a person for the purpose of exploiting that person. See s. 893.03, F.S. for standards and schedules of control substances. Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit such an offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexually explicit performances” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

<sup>5</sup> Section 92.55(1)(c), F.S.

<sup>6</sup> Section 92.53, F.S., relates to videotaping the testimony of a victim or witness under age 18 or who has an intellectual disability.

<sup>7</sup> Section 92.54, F.S., relates to the use of closed-circuit television in proceedings involving a victim or witness under the age of 18 or who has an intellectual disability.

<sup>8</sup> While a defendant charged with a misdemeanor or criminal traffic offense may request for a deposition to be taken, the Florida Rules of Criminal Procedure only allow for a deposition to take place upon a showing of good cause. Fla. R. Crim.(h)(1)(D) P. 3.220(a)

<sup>9</sup> Fla. R. Crim. P. 3.220(a).

<sup>10</sup> Fla. R. Crim. P. 3.220(h)(1).

<sup>11</sup> Section 48.031, F.S., provides that a criminal witness subpoena commanding the witness to appear for a deposition may be posted by a person authorized to serve process at the witness’s residence if one attempt to serve the subpoena has failed.

<sup>12</sup> Fla. R. Crim. P. 3.220(h)(1).

<sup>13</sup> Fla. R. Crim. P. 3.220(h)(1)(A), (B), and (D). Category C witnesses may not be deposed unless the court determines that the witness should be listed in another category. Category A witnesses include eye witnesses, alibi witnesses and rebuttal to alibi witnesses, witnesses who were present when a recorded or unrecorded statement was taken from or made by a defendant or codefendant, investigating officers, witnesses known by the prosecutor to have any material information that tends to

The Florida Rules of Criminal Procedure set out a list of factors that the court should consider when deciding whether good cause has been shown, such as the consequences to the defendant, the complexity of the issues involved, and complexity of the testimony of the witness.<sup>14</sup> Depositions of children who are under 18 years of age must be videotaped unless otherwise ordered by the court, and the court has the discretion to order videotaping of a deposition or the taking of a deposition of a witness with a fragile emotional strength, or an intellectual disability to be in the presence of a trial judge or a special magistrate. Upon a showing of good cause, the court may also issue protective orders, for instance, limiting the scope of a deposition or sealing a deposition.<sup>15</sup>

### Civil

In civil proceedings, after the commencement of an action, any party may take a deposition of any person, including a party, upon oral examination<sup>16</sup> or upon written questions.<sup>17</sup> A party who wishes to take a deposition of a person upon oral examination must give reasonable notice in writing to every party.<sup>18</sup> Leave of court is required in limited circumstances, such as certain instances when a plaintiff seeks to take a deposition within 30 days after service of process or initial pleading upon the defendant.<sup>19</sup> Any deposition may be recorded by videotape without leave of court or stipulation by the parties as long as the taking of the deposition complies with certain Rules, such as the party must include the intent to videotape the deposition and other related details in the notice of taking the deposition.<sup>20</sup>

For good cause shown, the court may enlarge or shorten the time for the taking of deposition.<sup>21</sup> On motion of a party or the deponent and a showing that the examination is being conducted in bad faith or other specified circumstances, the court in which the action is pending or the circuit court where the deposition is being taken may terminate or limit the scope of the deposition.<sup>22</sup>

### ***Examination and Cross-Examination for Qualifying a Witness or Testifying***

Every person is competent to be a witness except as otherwise provided by statute.<sup>23</sup> A person is disqualified from testifying as a witness if the court finds that the person is:

- Incapable of expressing himself or herself concerning the matter in such a manner as to be understood; or

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negate the guilt of the defendant as to any offense charged, child hearsay witnesses, expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify, and informant witnesses, whether in custody, who offer testimony concerning the statements of a defendant about the issues for which the defendant is being tried. Category C is all witnesses who performed only ministerial functions or whom the prosecutor does not intend to call at trial and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense. Category B witnesses include any witnesses not listed in either Category A or Category C.

<sup>14</sup> See Fla. R. Crim. P. 3.200(h)(1)(B) and (D)

<sup>15</sup> Fla. R. Crim. P. 3.220(l)(1)

<sup>16</sup> Fla. R. Civ. P. 1.310(a)

<sup>17</sup> Fla. R. Civ. P. 1.320(a)

<sup>18</sup> Fla. R. Civ. P. 1.310(b)

<sup>19</sup> Fla. R. Civ. P. 1.310(a)

<sup>20</sup> Fla. R. Civ. P. 1.310(b)(4)

<sup>21</sup> Fla. R. Civ. P. 1.310(b)(3)

<sup>22</sup> Fla. R. Civ. P. 1.310(d)

<sup>23</sup> Section 90.601, F.S.



- Incapable of understanding the duty of a witness to tell the truth.<sup>24</sup>

Further, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion if certain criteria is met.<sup>25</sup> Prior to an expert witness giving an opinion, the party against whom the opinion is offered may conduct a voir dire examination of the witness directed at the underlying facts or data for the witness's opinion.<sup>26</sup>

### ***Video Testimony***

Sections 92.53 and 92.54, F.S., authorize a court to enter a protective order after a motion and hearing in camera if the court finds that a victim or witness under 18 years of age or who has an intellectual disability is substantially likely to suffer at least moderate emotional or mental harm due to the presence of the defendant if required to testify in open court.

The court may order the testimony of such a victim or witness be videotaped and used in lieu of testimony in open court. However, the defendant and his or her counsel must be allowed to be present at any videotaping, but the court may order the defendant to view the testimony from outside the presence of the protected individual.<sup>27</sup> Alternatively, the court may require that the protected individual's testimony be taken outside the courtroom and shown in the courtroom by means of closed circuit television.<sup>28</sup> Only specified parties are allowed in the room where the testimony is recorded. A court may require a defendant to view the testimony from the courtroom, but must permit the defendant to observe and hear the person's testimony.<sup>29</sup>

### ***Special Protections of Vulnerable Victims and Witnesses***

The court must consider several factors when ruling upon a motion to protect a vulnerable victim or witness, including, but not limited to: the age of the vulnerable victim or witness, the nature of the offense or act, the relationship of the vulnerable victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the vulnerable victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.<sup>30</sup>

When a victim or witness meets specified criteria, the court may enter an order:

- Limiting the number of times protected individuals may be interviewed;
- Prohibiting depositions of a victim or witness;
- Requiring the submission of questions before examination of a victim or witness;
- Setting the place and conditions for interviewing a victim or witness or for conducting any other proceeding; or
- Allowing or prohibiting any person's attendance at any proceeding.<sup>31</sup>

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<sup>24</sup> Section 90.603, F.S.

<sup>25</sup> Section 90.702, F.S.

<sup>26</sup> Section 90.705(2), F.S.

<sup>27</sup> Section 92.53(4), F.S.

<sup>28</sup> Section 92.54, F.S.

<sup>29</sup> Section 92.53(4), F.S.

<sup>30</sup> Section 92.55(3), F.S.

<sup>31</sup> Section 92.55(4), F.S.

The court may also order any other conditions it finds just and appropriate including the use of a therapy animal or facility dog, in any proceeding involving a sexual offense or child abuse, abandonment, or neglect.<sup>32</sup> The court must consider certain factors when deciding whether to permit a vulnerable victim or witness to testify with the assistance of a therapy animal or facility dog, including, but not limited to, the age and interests of the vulnerable victim or witness, the rights of the parties to the litigation, and any other relevant factors that would facilitate the testimony of the vulnerable victim.<sup>33</sup>

Section 92.55(5)(b), F.S., defines the following terms:

- “Facility dog” as a dog that has been trained, evaluated, and certified as a facility dog pursuant to industry standards and provides unobtrusive emotional support to children and adults in facility settings.
- “Therapy animal” as an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

### **Human Trafficking**

Human trafficking is a form of modern-day slavery.<sup>34</sup> Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.<sup>35</sup> Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.<sup>36</sup> Any minor who is younger than 18 years of age, and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.<sup>37</sup> Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.<sup>38</sup>

### ***Human Trafficking in Florida***

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,<sup>39</sup> purchasing, patronizing, procuring, or obtaining<sup>40</sup> another person for the purpose of exploitation of that person.<sup>41</sup> In Florida, any person who knowingly, or

<sup>32</sup> Section 92.55(5), F.S.

<sup>33</sup> Section 92.55(5)(a), F.S.

<sup>34</sup> Section 787.06(1)(a), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.shtml> (last visited January 12, 2022).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

<sup>40</sup> Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

<sup>41</sup> Section 787.06(2)(d), F.S.

in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.<sup>42</sup>

Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor or services of any child under the age of 18 commits a first degree felony;<sup>43</sup>
- Labor or services of any child under the age of 18 who is an unauthorized alien<sup>44</sup> commits a first degree felony;<sup>45</sup>
- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;<sup>46</sup>
- Commercial sexual activity<sup>47</sup> who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;<sup>48</sup> or
- Commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective<sup>49</sup> or mentally incapacitated<sup>50</sup> is involved commits a life felony.<sup>51</sup>

The above-mentioned first degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.<sup>52</sup> Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.<sup>53</sup>

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<sup>42</sup> Section 787.06(3), F.S.

<sup>43</sup> Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>44</sup> Section 787.06(2)(j), F.S., defines "unauthorized alien" as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

<sup>45</sup> Section 787.06(3)(c)1., F.S.

<sup>46</sup> Section 787.06(3)(e)1., F.S.

<sup>47</sup> Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

<sup>48</sup> Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>49</sup> Section 794.011(1)(b), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

<sup>50</sup> Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

<sup>51</sup> A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

<sup>52</sup> Section 787.06(8)(b), F.S.

<sup>53</sup> Section 787.06(9), F.S.

Florida is ranked the third highest state of reported human trafficking cases in the United States.<sup>54</sup> In 2020, the Florida Abuse Hotline received an increase in reports of commercially exploited children from 3,088 reports in 2019 to 3,181 reports in 2020.<sup>55</sup>

### ***Human Trafficking Data Collection***

Human trafficking data is primarily based on information provided by identified victims.<sup>56</sup> Data is typically collected by a range of different individuals, including law enforcement, courts, and non-governmental organizations offering protection and assistance to victims.<sup>57</sup> Federal law requires the FBI to collect human-trafficking data.<sup>58</sup> State programs and local law enforcement agencies that participate in federal data collection efforts provide counts of offenses, case clearances, and arrests for human trafficking for the purpose of commercial sex acts or involuntary servitude.<sup>59</sup>

The University of South Florida (USF) recently developed a statewide central database to allow for tracking incidents of human trafficking down to specific neighborhoods and zip codes.<sup>60</sup> The lab is currently working with Hillsborough, Pinellas, and Pasco counties on sharing data collected from numerous entities, including law enforcement, courts, the DCF, and the Department of Health.<sup>61</sup> The lab also plans to provide real-time data on available vacancies within human trafficking shelters throughout the state.<sup>62</sup>

## **III. Effect of Proposed Changes:**

### **Vulnerable Victims and Witnesses**

The bill amends various provisions in s. 92.55, F.S., relating to judicial or other proceedings involving victims and witnesses younger than the age of 18, persons who have intellectual disabilities, or sexual offense victims.

Upon a motion of any party, specified persons appointed to represent a vulnerable victim or witness, or on the court's own motion, the court may enter an order necessary to protect the person in any judicial or other proceeding from moderate emotional or mental harm, as opposed to severe as required under current law. The requirement under current law that the harm be "due

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<sup>54</sup> Florida Alliance to End Human Trafficking, *We need to End Human Trafficking in the State of Florida*, <https://floridaallianceendht.com/> (last visited January 12, 2022).

<sup>55</sup> Office of Program Policy Analysis and Gov't Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, Report No. 2106, p. 2, (July 2021), <https://oppaga.fl.gov/Documents/Reports/21-06.pdf> (last visited Jan. 12, 2022).

<sup>56</sup> The UN Global Migration Data Analysis Centre, *Migration Data Portal: Human Trafficking*, (last updated May 6, 2021) available at <https://www.migrationdataportal.org/themes/human-trafficking#data-sources> (last visited Jan. 12, 2022).

<sup>57</sup> *Id.*

<sup>58</sup> The U.S. Department of Justice, *Human Trafficking Data Collection Activities, 2021*, p. 2 (October 2021), available at <https://bjs.ojp.gov/content/pub/pdf/htdca21.pdf> (last visited Jan. 12, 2022).

<sup>59</sup> *Id.*

<sup>60</sup> Briona Arradondo, *USF Creates First Centralized Human Trafficking Incident Database*, FOX 13, October 15, 2021, available at <https://www.fox13news.com/news/usf-creates-first-centralized-human-trafficking-incident-database> (last visited Jan. 12, 2022).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

to the presence of the defendant if the victim or witness is required to testify in open court” has been deleted.

The bill provides that depositions are prohibited, except upon a showing of good cause, of vulnerable victims or witnesses involving any of the following:

- Abuse,<sup>63</sup> abandonment,<sup>64</sup> or neglect<sup>65</sup> of children under ch. 39, F.S.,<sup>66</sup>
- Any offense constituting domestic violence;<sup>67</sup>
- Murder;
- Manslaughter;
- Aggravated cyberstalking;<sup>68</sup>
- Kidnapping;
- False imprisonment;<sup>69</sup>
- Human trafficking;<sup>70</sup>
- Sexual battery;
- Lewd or lascivious offenses;<sup>71</sup>

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<sup>63</sup> Section 39.01(2), F.S., defines “abuse” as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.

<sup>64</sup> Section 39.01(1), F.S., defines “abandoned” or “abandonment” as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. “Establish or maintain a substantial and positive relationship” means, in part, frequent and regular contact with the child, and the exercise of parental rights and responsibilities.

<sup>65</sup> Section 39.01(50), F.S., states “neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired, except when such circumstances are caused primarily by financial inability unless services have been offered and rejected by such person.

<sup>66</sup> Chapter 39, F.S., relates to dependency proceedings.

<sup>67</sup> Section 741.28(2), F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

<sup>68</sup> Section 784.048(1)(d), F.S., states “cyberstalk” means: 1. To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or 2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission, causing substantial emotional distress to that person and serving no legitimate purpose.

<sup>69</sup> Section 787.02(1)(a), F.S., defines “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

<sup>70</sup> Section 787.06(2)(d), F.S., defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.

<sup>71</sup> Section 800.04(4)(a), F.S., states that a person commits lewd or lascivious battery by: 1. Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or 2. Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity. Section 800.04(5), F.S., states a person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation. Section 800.04(6), F.S., states a person who: 1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or 2. Solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct. Section 800.04(7)(a), F.S., states a person

- Child abuse or neglect;<sup>72, 73</sup>
- Use of a child in a sexual performance;<sup>74</sup> or
- Computer pornography<sup>75</sup>, or the transmission of pornography by electronic device or equipment.

The court may authorize the taking of a deposition and may order protections deemed necessary upon written motion and written findings that:

- A deposition is necessary to assist a trial;
- The evidence sought is not reasonably available by any other means; and
- The probative value of the testimony outweighs the potential detriment to the person to be deposed.

The bill also modifies current law to give the court discretion, rather than require, the court to consider certain factors when ruling on a motion to take a deposition under s. 92.55(4), F.S. Such factors are also amended, the last two points below of which have been relocated from s. 92.55(3)(b) and (c), F.S., to include:

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who: 1. Intentionally masturbates; 2. Intentionally exposes the genitals in a lewd or lascivious manner; or 3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition. Section 825.1025(2)(a), F.S., states that “lewd or lascivious battery upon an elderly person or disabled person” occurs when a person encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent. Section 825.1025(3)(a), F.S., states that “lewd or lascivious molestation of an elderly person or disabled person” occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly person or disabled person when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent. Section 825.1025(4)(a), F.S., states that “lewd or lascivious exhibition in the presence of an elderly person or disabled person” occurs when a person, in the presence of an elderly person or disabled person: 1. Intentionally masturbates; 2. Intentionally exposes his or her genitals in a lewd or lascivious manner; or 3. Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent to having such act committed in his or her presence.

<sup>72</sup> Section 827.03(1)(b), F.S., defines “child abuse” as: 1. Intentional infliction of physical or mental injury upon a child; 2. An intentional act that could reasonably be expected to result in physical or mental injury to a child; or 3. Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

<sup>73</sup> Section 827.03(1)(e), F.S., defines “neglect” as: 1. A caregiver’s failure or omission to provide a child with the care, supervision and services necessary to maintain the child’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or 2. A caregiver’s failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

<sup>74</sup> Section 827.071(1)(i), F.S., defines “sexual performance” as any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

<sup>75</sup> Section 847.0135(2), F.S., defines “computer pornography” as a person who: (a) knowingly compiles, enters into, or transmits by use of computer; (b) makes, prints, publishes, or reproduces by other computerized means; (c) knowingly causes or allows to be entered into or transmitted by use of computer; or (d) buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct.

- The complexity of the issues involved;
- The degree of emotional or mental harm, as opposed to trauma, that will result as a consequence of the examination;
- The functional capacity of the victim or witness if he or she has an intellectual disability; and
- The age of the sexual offense victim when the sexual offense occurred.

The other factors listed under s. 92.55(3)(b) and (c), F.S., are removed under the bill.

Provisions related to determining when to permit the use of a facility dog or therapy animal found in s. 92.55(5)(a), F.S., are included, in part, under the renumbered s. 92.55(4), F.S., and that subsection is otherwise removed from the section. The factors that are removed include:

- The interests of the child victim or witness or sexual offense victim; and
- The rights of the parties to the litigation.

The bill requires any orders the court makes to protect vulnerable victims or witnesses to be deemed just and appropriate. The bill also adds protections that the court may order, including:

- Limiting the length and scope of a deposition;
- Requiring a deposition to be taken only by written questions;
- Requiring a deposition to be in the presence of a trial judge or magistrate;
- Sealing the tape or transcript of a deposition until further order of the court; or
- Allowing the use of a therapy animal or facility dog.

The bill provides that s. 794.022, F.S., related to the rules of evidence in prosecutions, applies to depositions taken pursuant to s. 92.55, F.S. If a deposition is taken pursuant to s. 92.55, F.S., the court must appoint a guardian ad litem or other advocate pursuant to s. 914.17, F.S., to represent the deponent for purposes of the deposition if the deponent does not already have counsel. On its own motion or that of any party, the court may request the aid of an interpreter to aid in formulating methods of questioning and in interpreting his or her answers during proceedings conducted under s. 92.55, F.S. The bill requires the court to make specific findings of fact on the record as to the basis for its orders and rulings under s. 92.55, F.S.

The bill relocates the definitions of “facility dog” and “therapy animal” from s. 92.55(5)(b), F.S., to s. 92.55(1), F.S., and makes technical amendments to the section. The definition of the term “sexual offense victim or witness” is modified to define the term “sexual offense victim” as a person who was under the age of 18 when he or she was the victim of a sexual offense.

The bill removes protections for witnesses of sexual offense cases who are not minors or adults with intellectual disabilities throughout s. 92.55, F.S., including provisions under current law that authorize the court to enter any orders which are necessary to protect a person in any official proceeding from moderate emotional or mental harm, and any orders which are deemed just and appropriate for the protection of a child.

### **Human Trafficking Victim Data Collection**

The bill requires, by October 1, 2022, the University of South Florida, in consultation with the Florida Alliance to End Human Trafficking, to develop and submit a proposal to the Attorney

General for the creation of a unified statewide data repository for anonymous human trafficking data. The proposal:

- Must provide that the data repository will be housed within the University of South Florida's Trafficking in Persons-Risk to Resilience Research Lab;
- Must outline the need for a unified data repository to serve as a portal to collect and analyze anonymous statewide human trafficking data, to inform statewide efforts to combat human trafficking, and to better serve victims of human trafficking; and
- Should consider and recommend various funding mechanisms to establish and operate the data repository, including the potential for use of institutional and privately-donated funds.

The bill is effective upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

Article III, section 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith.” When courts must assess whether a bill complies with this single-subject requirement, the “standard of review is highly deferential.”<sup>76</sup>

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

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<sup>76</sup> *Franklin v. State*, 887 So. 2d 1069, 1073 (Fla. 2004). However, the “accomplishment of several ‘purposes’ may be logically embraced in one ‘subject’ so long as all such purposes are germane to . . . the expressed general subject.” *Id.* at 1078 (citing *State ex rel. Crump v. Sullivan*, 128 So. 478, 480 (1930)).



**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

CS/SB 772 requires the court to apply amended standards for when and what kind of protections to grant to vulnerable victims and witnesses. To the extent that the bill results in additional court hearings to determine good cause and appropriate protections for vulnerable victims and witnesses, the bill will result in an indeterminate negative impact on the courts, state attorneys, defense counsel, and civil litigators.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 92.55 and 943.0583 of the Florida Statutes.

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

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

**CS/CS by Rules on February 10, 2022:**

The committee substitute:

- Modifies the definition of the term “sexual offense victim or witness” to define the term “sexual offense victims”
- Clarifies witnesses of sexual offense cases who are not minors or adults with intellectual disabilities do not include protections under s. 92.55, F.S., including provisions that:
  - Authorize the court to enter any order which is necessary to protect a person in any official proceeding from moderate emotional harm;
  - Restrict the taking of depositions, except upon a showing of good cause, of certain victims or witnesses in proceedings involving specific offenses;
  - Authorize the court to consider the age of a sexual offense victim when determining a motion filed under s. 92.55, F.S.;
  - Authorize the court to enter orders it deems just and appropriate for the protection of a child; and
  - Authorize the court to use the aid of an interpreter in formulating methods of questioning of certain persons during proceedings under s. 92.55, F.S.
- Adds lewd or lascivious offenses under s. 800.04, F.S., to the list of offenses for which depositions of certain witnesses may not be taken except upon a showing of good cause.

**CS by Children, Families, and Elder Affairs on January 11, 2022:**

The committee substitute:

- Removes the amendment that expands the authorization of human trafficking victims to expunge a criminal history record;
- Requires, by October 1, 2022, the University of South Florida, in consultation with The Florida Alliance to End Human Trafficking to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data; and
- Specifies certain content that must be included in the proposal.

B. Amendments:

None.



413494

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 02/10/2022 | . |       |
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The Committee on Rules (Diaz) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 40 - 154  
and insert:

(c)~~(a)~~ "Sexual offense victim ~~or witness~~" means a person who was under the age of 18 when he or she was the victim of ~~or a witness to~~ a sexual offense.

(b) "Sexual offense" means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

(d) "Therapy animal" means an animal that has been trained, evaluated, and certified as a therapy animal pursuant to



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industry standards by an organization that certifies animals as appropriate to provide animal therapy.

(2) Upon motion of any party;~~7~~ upon motion of a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court ~~under s. 914.17~~ for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim; ~~or witness,~~ or upon its own motion, the court may enter any order necessary to protect the person ~~victim or witness~~ in any judicial proceeding or other official proceeding from moderate ~~severe~~ emotional or mental harm ~~due to the presence of the defendant if the victim or witness is required to testify in open court.~~ Such orders must relate to the taking of testimony and include, but are not limited to:

(a) Interviewing or the taking of depositions as part of a civil or criminal proceeding.

(b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.

(c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

(3)(a) Depositions are not allowed, except upon a showing of good cause, of victims or witnesses younger than the age of 18, persons who have intellectual disabilities, or sexual offense victims in proceedings involving any of the following:

1. Abuse, abandonment, or neglect of children under chapter 39.

2. Any offense constituting domestic violence as defined in s. 741.28.

3. Murder under s. 782.04.



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41        4. Manslaughter under s. 782.07.  
42        5. Aggravated cyberstalking under s. 784.048.  
43        6. Kidnapping under s. 787.01.  
44        7. False imprisonment under s. 787.02.  
45        8. Human trafficking under s. 787.06.  
46        9. Sexual battery under s. 794.011.  
47        10. Child abuse or neglect of a child under s. 827.03.  
48        11. Use of a child in a sexual performance under s.  
49 827.071.  
50        12. Computer pornography under s. 847.0135 or the  
51 transmission of pornography by electronic device or equipment  
52 under s. 847.0137.  
53        (b) Upon written motion and written findings that a  
54 deposition is necessary to assist a trial, that the evidence  
55 sought is not reasonably available by any other means, and that  
56 the probative value of the testimony outweighs the potential  
57 detriment to the person to be deposed, the court may authorize  
58 the taking of a deposition and may order protections deemed  
59 necessary, including those provided in this section.  
60        (4)-(3) In ruling upon a ~~the~~ motion filed under this  
61 section, the court may ~~shall~~ consider:  
62        (a) The age of the victim or witness. ~~child,~~  
63        (b) The nature of the offense or act.~~7~~  
64        (c) The complexity of the issues involved.  
65        (d) The relationship of the victim or witness ~~child~~ to the  
66 parties in the case or to the defendant in a criminal action.~~7~~  
67        (e) The degree of emotional or mental harm ~~trauma~~ that will  
68 result ~~to the child~~ as a consequence of the examination,  
69 interview, or testimony. ~~defendant's presence, and~~



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70        (f) The functional capacity of the victim or witness if he  
71 or she has an intellectual disability.

72        (g) The age of the sexual offense victim when the sexual  
73 offense occurred.

74        (h) Any other fact that the court deems relevant;

75        ~~(b) The age of the person who has an intellectual~~  
76 ~~disability, the functional capacity of such person, the nature~~  
77 ~~of the offenses or act, the relationship of the person to the~~  
78 ~~parties in the case or to the defendant in a criminal action,~~  
79 ~~the degree of emotional trauma that will result to the person as~~  
80 ~~a consequence of the defendant's presence, and any other fact~~  
81 ~~that the court deems relevant; or~~

82        ~~(c) The age of the sexual offense victim or witness when the~~  
83 ~~sexual offense occurred, the relationship of the sexual offense~~  
84 ~~victim or witness to the parties in the case or to the defendant~~  
85 ~~in a criminal action, the degree of emotional trauma that will~~  
86 ~~result to the sexual offense victim or witness as a consequence~~  
87 ~~of the defendant's presence, and any other fact that the court~~  
88 ~~deems relevant.~~

89        (5) (4) In addition to such other relief provided by law,  
90 the court may enter orders it deems just and appropriate for the  
91 protection of limiting the number of times that a child, a  
92 person who has an intellectual disability, or a sexual offense  
93 victim, including limiting the number of times a victim or  
94 witness may be interviewed, limiting the length and scope of a  
95 deposition, requiring a deposition to be taken only by written  
96 questions, requiring a deposition to be in the presence of a  
97 trial judge or magistrate, sealing the tape or transcript of a  
98 deposition until further order of the court, allowing use of a



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therapy animal or facility dog ~~prohibiting depositions of the~~  
~~victim or witness~~, requiring the submission of questions before  
the examination of the victim or witness, setting the place and  
conditions for interviewing the victim or witness or for  
conducting any other proceeding, or permitting or prohibiting  
the attendance of any person at any proceeding. The court shall  
enter any order necessary to protect the rights of all parties,  
including the defendant in any criminal action.

(6) Section 794.022 applies to depositions taken pursuant  
to this section. If a deposition is taken pursuant to this  
section, the court must appoint a guardian ad litem or other  
advocate pursuant to s. 914.17 to represent the deponent for the  
purposes of the deposition if the deponent does not already have  
counsel.

(7) The court, on its own motion or that of any party, may  
request the aid of an interpreter, as provided in s. 90.606, to  
aid the parties in formulating methods of questioning the child,  
the person who has an intellectual disability, or the sexual  
offense victim and in interpreting his or her answers during

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

And the title is amended as follows:

Delete line 3

and insert:

witnesses; amending s. 92.55, F.S.; replacing the term  
"sexual offense victim or witness" with "sexual  
offense victim"; defining the term "sexual offense  
victim"; revising the



144340

LEGISLATIVE ACTION

| Senate     | . | House |
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| Comm: RCS  | . |       |
| 02/10/2022 | . |       |
|            | . |       |
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The Committee on Rules (Diaz) recommended the following:

**Senate Amendment to Amendment (413494)**

Between lines 46 and 47  
insert:  
10. Lewd or lascivious offenses under s. 800.04 and s.  
825.1025.



By the Committee on Children, Families, and Elder Affairs; and  
Senators Diaz and Perry

586-01951A-22

2022772c1

A bill to be entitled

An act relating to the protection of victims and witnesses; amending s. 92.55, F.S.; revising the standard for orders to protect certain testifying victims and witnesses; prohibiting depositions of certain victims and witnesses in certain proceedings without a showing of good cause; authorizing the court to allow such depositions under certain circumstances; revising factors to be considered by a court in a motion seeking to protect a victim or witness; revising provisions related to available relief; requiring the court to appoint a guardian ad litem or other advocate for the deponent under certain circumstances; authorizing the court to request the aid of an interpreter; requiring the court to make specific findings of fact on the record for certain orders and rulings; making technical changes; requiring the University of South Florida, in consultation with a specified organization, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data; providing requirements for the proposal; providing an effective date.

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

Section 1. Section 92.55, Florida Statutes, is amended to read:

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

586-01951A-22

2022772c1

92.55 Judicial or other proceedings involving certain victims and witnesses ~~victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness~~; special protections; use of therapy animals or facility dogs.—

(1) For purposes of this section, the term:

(a) "Facility dog" means a dog that has been trained, evaluated, and certified as a facility dog pursuant to industry standards and provides unobtrusive emotional support to children and adults in facility settings.

(c) ~~(a)~~ "Sexual offense victim or witness" means a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense.

(b) "Sexual offense" means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

(d) "Therapy animal" means an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

(2) Upon motion of any party; ~~7~~ upon motion of a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court ~~under s. 914.17~~ for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness; ~~7~~ or upon its own motion, the court may enter any order necessary to protect the person ~~victim or witness~~ in any judicial proceeding or other official proceeding from moderate ~~severe~~ emotional or mental harm ~~due to the presence of the defendant if the victim or witness is required to testify in open court~~. Such orders must

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

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2022772c1

relate to the taking of testimony and include, but are not limited to:

(a) Interviewing or the taking of depositions as part of a civil or criminal proceeding.

(b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.

(c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

(3) (a) Depositions are not allowed, except upon a showing of good cause, of victims or witnesses younger than the age of 18, persons who have intellectual disabilities, or sexual offense victims or witnesses in proceedings involving any of the following:

1. Abuse, abandonment, or neglect of children under chapter 39.

2. Any offense constituting domestic violence as defined in s. 741.28.

3. Murder under s. 782.04.

4. Manslaughter under s. 782.07.

5. Aggravated cyberstalking under s. 784.048.

6. Kidnapping under s. 787.01.

7. False imprisonment under s. 787.02.

8. Human trafficking under s. 787.06.

9. Sexual battery under s. 794.011.

10. Lewd or lascivious offenses under s. 825.1025.

11. Child abuse or neglect of a child under s. 827.03.

12. Use of a child in a sexual performance under s. 827.071.

13. Computer pornography under s. 847.0135 or the

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transmission of pornography by electronic device or equipment under s. 847.0137.

(b) Upon written motion and written findings that a deposition is necessary to assist a trial, that the evidence sought is not reasonably available by any other means, and that the probative value of the testimony outweighs the potential detriment to the person to be deposed, the court may authorize the taking of a deposition and may order protections deemed necessary, including those provided in this section.

(4) ~~(3)~~ In ruling upon a ~~the~~ motion filed under this section, the court may ~~shall~~ consider:

(a) The age of the victim or witness. ~~child,~~

(b) The nature of the offense or act. ~~7~~

(c) The complexity of the issues involved.

(d) The relationship of the victim or witness ~~child~~ to the parties in the case or to the defendant in a criminal action. ~~7~~

(e) The degree of emotional or mental harm ~~trauma~~ that will result ~~to the child~~ as a consequence of the examination, interview, or testimony. ~~defendant's presence, and~~

(f) The functional capacity of the victim or witness if he or she has an intellectual disability.

(g) The age of the sexual offense victim or witness when the sexual offense occurred.

(h) Any other fact that the court deems relevant. ~~7~~

~~(b) The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person as~~

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~~a consequence of the defendant's presence, and any other fact that the court deems relevant; or~~

~~(c) The age of the sexual offense victim or witness when the sexual offense occurred, the relationship of the sexual offense victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the sexual offense victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.~~

~~(5)(4)~~ In addition to such other relief provided by law, the court may enter orders it deems just and appropriate for the protection of ~~limiting the number of times that~~ a child, a person who has an intellectual disability, or a sexual offense victim or witness, including limiting the number of times a victim or witness may be interviewed, limiting the length and scope of a deposition, requiring a deposition to be taken only by written questions, requiring a deposition to be in the presence of a trial judge or magistrate, sealing the tape or transcript of a deposition until further order of the court, allowing use of a therapy animal or facility dog ~~prohibiting depositions of the victim or witness,~~ requiring the submission of questions before the examination of the victim or witness, setting the place and conditions for interviewing the victim or witness or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.

(6) Section 794.022 applies to depositions taken pursuant to this section. If a deposition is taken pursuant to this

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section, the court must appoint a guardian ad litem or other advocate pursuant to s. 914.17 to represent the deponent for the purposes of the deposition if the deponent does not already have counsel.

(7) The court, on its own motion or that of any party, may request the aid of an interpreter, as provided in s. 90.606, to aid the parties in formulating methods of questioning the person who has an intellectual disability or the sexual offense victim or witness and in interpreting his or her answers during proceedings conducted under this section.

(8) The court shall make specific findings of fact on the record as to the basis for its orders and rulings under this section

~~(5) The court may set any other conditions it finds just and appropriate when taking the testimony of a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness, including the use of a therapy animal or facility dog, in any proceeding involving a sexual offense or child abuse, abandonment, or neglect.~~

~~(a) When deciding whether to permit a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness to testify with the assistance of a therapy animal or facility dog, the court shall consider the age of the child victim or witness, the age of the sexual offense victim or witness at the time the sexual offense occurred, the interests of the child victim or witness or sexual offense victim or witness, the rights of the parties to the litigation, and any other relevant factor that~~

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175 ~~would facilitate the testimony by the victim or witness under~~  
176 ~~the age of 18, person who has an intellectual disability, or~~  
177 ~~sexual offense victim or witness.~~

178 ~~(b) For purposes of this subsection the term:~~

179 ~~1. "Facility dog" means a dog that has been trained,~~  
180 ~~evaluated, and certified as a facility dog pursuant to industry~~  
181 ~~standards and provides unobtrusive emotional support to children~~  
182 ~~and adults in facility settings.~~

183 ~~2. "Therapy animal" means an animal that has been trained,~~  
184 ~~evaluated, and certified as a therapy animal pursuant to~~  
185 ~~industry standards by an organization that certifies animals as~~  
186 ~~appropriate to provide animal therapy.~~

187 Section 2. By October 1, 2022, the University of South  
188 Florida, in consultation with the Florida Alliance to End Human  
189 Trafficking, shall develop and submit a proposal to the Attorney  
190 General for the creation of a unified statewide data repository  
191 for anonymous human trafficking data. The proposal must house  
192 the data repository within the University of South Florida's  
193 Trafficking in Persons-Risk to Resilience Research Lab and must  
194 outline the need for a unified data repository to serve as a  
195 portal to collect and analyze anonymous statewide human  
196 trafficking data, to inform statewide efforts to combat human  
197 trafficking, and to better serve victims of human trafficking.  
198 The proposal should consider and recommend various funding  
199 mechanisms to establish and operate the data repository,  
200 including the potential for use of institutional and privately-  
201 donated funds.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR MANNY DIAZ, JR.**  
36th District

**COMMITTEES:**  
Health Policy Chair  
Appropriations Subcommittee on  
Education Vice Chair  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Education  
Commerce and Tourism  
Rules

February 1st, 2022

Honorable Senator Kathleen Passidomo  
Chair  
Committee on Rules

Honorable Chair Passidomo,

I respectfully request that SB 772 Vulnerable Victims and Witnesses be placed in the next committee agenda.

Protection of Victims and Witnesses; Revising the standard for orders to protect certain testifying victims and witnesses; prohibiting depositions of certain victims and witnesses in certain proceedings without a showing of good cause; requiring the court to appoint a guardian ad litem or other advocate for the deponent under certain circumstances; requiring the University of South Florida, in consultation with a specified organization, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Diaz", is positioned above a horizontal line.

Senator Manny Diaz, Jr.  
Florida Senate, District 36

CC: John B. Phelps, Staff Director  
Cynthia Futch, Committee Administrative Assistant  
Paul Hayden, Legislative Assistant

**REPLY TO:**

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**Wilton Simpson**  
President of the Senate

**Aaron Bean**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 882

INTRODUCER: Rules Committee; Community Affairs Committee; and Senator Brodeur

SUBJECT: Inventories of Critical Wetlands

DATE: February 10, 2022

REVISED: \_\_\_\_\_

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|------------|----------------|-----------|------------------|
| 1. Carroll | Rogers         | EN        | <b>Favorable</b> |
| 2. Hackett | Ryon           | CA        | <b>Fav/CS</b>    |
| 3. Carroll | Phelps         | RC        | <b>Fav/CS</b>    |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 882 directs water management district governing boards to work with local governments to develop a list of critical wetlands to be acquired through the Land Acquisition Trust Fund.

**II. Present Situation:**

**Wetlands**

Wetlands are areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils.<sup>1</sup> Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes,

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<sup>1</sup> Section 373.019(27), F.S.

tidal marshes, mangrove swamps, and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.<sup>2</sup>

All state and local agencies use the same method to determine wetland boundaries.<sup>3</sup> The regulating agency should first attempt to identify the landward extent of wetlands based on the definition of wetlands, as stated in the paragraph above.<sup>4</sup> The landward extent (the boundary) of wetlands is determined by applying reasonable scientific judgement to evaluate the dominance of plant species, soils, and other hydrologic evidence of regular and periodic inundation and saturation. If the boundary cannot be located by definition, then the regulating agency should use site inspection or aerial photointerpretation, in combination with ground truthing. If the vegetation or soils of an upland or wetland area have been altered by natural or human-induced factors such that the boundary cannot be delineated reliably, and the area has hydric soils or riverwash, or would have hydric soils or riverwash but for a non-hydrologic mechanical mixing of the upper soil profile, then the agency shall use the most reliable available information and reasonable scientific judgement to determine the boundary. Reliable available information includes aerial photographs, remaining vegetation, authoritative site-specific documents, or topographical consistencies.<sup>5</sup>

### **Local Government Land Use**

In Florida, local governments have the exclusive authority to make basic determinations about the appropriate land uses in their jurisdictions, including wetlands, based on a broad range of factors.<sup>6</sup> Florida statute requires all local governments to adopt a comprehensive plan to determine allowable uses, densities and intensities, and development standards for all land within their jurisdictions, and ensure that all development be consistent with the adopted plan.<sup>7</sup> Through comprehensive planning, local governments are able to encourage the most appropriate use of land, water, and resources, consistent with the public interest.<sup>8</sup> All local government land development regulations must be consistent with the local comprehensive plan.<sup>9</sup> Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.<sup>10</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> DEP, *DEP 101: Wetlands*, <https://floridadep.gov/comm/press-office/content/dep-101-wetlands> (last visited Dec. 6, 2021).

<sup>4</sup> Fla. Admin. Code R. 62-340.300.

<sup>5</sup> *Id.*

<sup>6</sup> Richard Grosso and Jason Totoiu, *Planning and Permitting to Protect Wetlands: The Different Roles and Powers of State and Local Government*, 84 FLA. B.J. 39, 40 (April 2010) available at <https://www.floridabar.org/the-florida-bar-journal/planning-and-permitting-to-protect-wetlands-the-different-roles-and-powers-of-state-and-local-government/#:~:text=Florida%E2%80%99s%20Wetland%20Permitting%20Program%20Does%20Not%20Preempt%20Local,for%20the%20development%20of%20wetlands%20subject%20to%20mitigation> (last visited Dec. 17, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> Section 163.3161(4), F.S.

<sup>9</sup> Section 163.3194(1)(b), F.S.

<sup>10</sup> See ss. 163.3161(6) and 163.3194(1)(a), F.S.

## Water Management Districts

Water Management Districts (WMDs) are responsible for the administration of water resources at the regional level.<sup>11</sup> There are five WMDs in Florida: Northwest Florida, Suwannee River, St. Johns River, Southwest Florida, and South Florida WMDs. DEP has general supervisory control over the WMDs through a cooperative working relationship and guidance memos. The four core mission areas of the WMDs are:

- Water supply;
- Water quality;
- Flood protection and floodplain management; and
- Natural systems.<sup>12</sup>

Each WMD is responsible for developing a district water management plan for water resources within its region that addresses water supply, water quality, flood protection and floodplain management, and natural systems.<sup>13</sup> The district water management plan must be based on at least a 20-year planning period, must be developed and revised in cooperation with other agencies, regional water supply authorities, units of government, and interested parties, and must be updated at least once every five years.<sup>14</sup> The district water management plans must include:

- The scientific methodologies for establishing minimum flows and levels and all established minimum flows and levels;
- Identification of one or more water supply planning regions that make up the entire district;
- Technical data and information;
- A districtwide water supply assessment; and
- Any completed regional water supply plans.<sup>15</sup>

In formulating the district water management plans, each WMD must consider:

- The attainment of maximum reasonable-beneficial use of water resources;
- The maximum economic development of water resources consistent with other uses;
- The management of water resources for purposes like environmental protection, drainage, flood control, and water storage;
- The quantity of water available for application to a reasonable-beneficial use;
- The prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources;
- Presently exercised domestic use and permit rights;
- The preservation and enhancement of water quality; and
- The state water resources policy.<sup>16</sup>

At its option, a WMD may substitute an annual strategic plan for the requirement to develop a district water management plan and the district water management plan annual report, provided

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<sup>11</sup> DEP, *Water Management Districts*, <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited Dec. 7, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> Section 373.036(2), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



that it does not affect any other provision or requirement of law concerning the completion of the regional water supply plan, and the strategic plan meets the following minimum requirements:

- The strategic plan establishes the WMD's strategic priorities for at least a five-year period;
- The strategic plan identifies the goals, strategies, success indicators, funding sources, deliverables, and milestones to accomplish the strategic priorities;
- The strategic plan development process includes at least one publicly noticed meeting to allow public participation in its development;
- The strategic plan includes separately, as an addendum, an annual work plan report on the implementation of the strategic plan for the previous fiscal year, addressing success indicators, deliverables, and milestones.<sup>17</sup>

## **Wetlands in Federal and State Programs**

### ***National Wetlands Inventory***

The National Wetlands Inventory (NWI) was established by the U.S. Fish and Wildlife Service (FWS) to conduct a nationwide inventory of U.S. wetlands to document the distribution and type of wetlands to aid in conservation.<sup>18</sup> The NWI developed mapping techniques, a recording system for inventory findings, and a wetland classification system that is now the official FWS wetland classification system and the federal standard for wetland classification. The NWI relies on trained image analysts to identify and classify wetlands and deepwater habitats from aerial imagery. NWI data and wetlands maps can be found on the Wetlands Mapper.<sup>19</sup>

FWS has estimated wetlands coverage nationwide, including in Florida, using the NWI, and many historical estimates of wetlands are based on NWI data.<sup>20</sup> However, wetlands mapped in the inventory have not been verified on the ground, and maps produced using the inventory do not directly correspond to Florida agencies' methodology or the wetland mapping methodology used by the U.S. Army Corps of Engineers.<sup>21</sup>

### ***Florida Forever***

The Florida Forever program is the state's current blueprint for natural resource conservation.<sup>22</sup> It replaced the successful Preservation 2000 program, which acquired more than 1.78 million acres of land for protection. The Florida Forever Act, implemented in 2000, reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better

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<sup>17</sup> *Id.*

<sup>18</sup> U.S. Fish and Wildlife Service, *NWI Program Overview*, <https://fws.gov/wetlands/nwi/Overview.html> (last visited Dec. 17, 2021).

<sup>19</sup> *Id.*; U.S. Fish and Wildlife Service, *Wetlands Mapper*, <https://fws.gov/wetlands/data/Mapper.html> (last visited Dec. 17, 2021).

<sup>20</sup> DEAR and DEP, *Final Integrated Water Quality Assessment for Florida*, 88 (2016), available at <https://floridadep.gov/sites/default/files/2016-Integrated-Report.pdf> (last visited Dec. 17, 2021).

<sup>21</sup> *Id.* at 88-89. The U.S. Army Corps of Engineers uses three characteristics to determine if an area is wetland: vegetation, soil, and hydrology. Unless an area has been altered or is a rare natural situation, indicators of all three characteristics must be present for an area to be a wetland. U.S. Army Corps of Engineers, *Wetlands Identification*, <https://www.nan.usace.army.mil/Missions/Regulatory/Wetlands-Identification/> (last visited Dec. 17, 2021).

<sup>22</sup> DEP, *2021 Florida Forever Five-Year Plan*, 9 (2021), available at [https://floridadep.gov/sites/default/files/FLDEP\\_DSL\\_OES\\_FF\\_2021Abstract\\_2.pdf](https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_2021Abstract_2.pdf) (last visited Dec. 17, 2021).

manage the land acquired by the state.<sup>23</sup> Florida Forever encompasses a wide range of goals, including:

- Land acquisition;
- Environmental restoration;
- Water resource development and supply;
- Increased public access;
- Public lands management and maintenance; and
- Increased protection of land through the purchase of conservation easements.<sup>24</sup>

The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and Florida Forever programs.<sup>25</sup> Florida Forever provides for the issuance of up to \$5.3 billion in Florida Forever bonds to finance or refinance the cost of acquisition and improvement of land and water areas for restoration, conservation, recreation, water resource development, or historical preservation.<sup>26</sup> Bonds may also be issued for capital improvements<sup>27</sup> to lands and water areas which accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.<sup>28</sup> Florida Forever projects and acquisitions must contribute to the achievement of specific goals, which must be evaluated in accordance with specific criteria and numeric performance measures.<sup>29</sup> The following are specific goals that involve wetland preservation and management:

- To increase the protection of Florida’s biodiversity at the species, natural community, and landscape levels, as measured by:
  - The number of acres acquired of significant strategic habitat conservation areas;
  - The number of acres acquired of highest priority conservation areas for Florida’s rarest species;
  - The number of acres acquired of significant landscapes, landscape linkages, and conservation corridors, giving priority to completing linkages;
  - The number of acres acquired of underrepresented native ecosystems;
  - The number of landscape-sized protection areas of at least 50,000 acres that exhibit a mosaic of predominantly intact or restorable natural communities established through new acquisition projects of augmentations to previous projects; or

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<sup>23</sup> *Id.*

<sup>24</sup> Section 259.105, F.S.

<sup>25</sup> DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Dec. 17, 2021); see Florida Natural Areas Inventory, *Summary of Florida Conservation Lands* (Feb. 2021), available at <https://www.fnai.org/conslands/conservation-lands> (last visited Jan. 31, 2022). This inventory provides a complete summary of the total amount of conservation lands in Florida.

<sup>26</sup> Section 215.618, F.S.

<sup>27</sup> Section 259.03(3), F.S. The terms “capital improvement” or “capital project expenditure,” when used in ch. 259, F.S., mean “those activities relating to the acquisition, restoration, public access, and recreational uses of such lands, water areas, and related resources deemed necessary to accomplish the purposes of this chapter. Eligible activities include, but are not limited to: the initial removal of invasive plants; the construction, improvement, enlargement or extension of facilities’ signs, firelanes, access roads, and trails; or any other activities that serve to restore, conserve, protect, or provide public access, recreational opportunities, or necessary services for land or water areas. Such activities shall be identified prior to the acquisition of a parcel or the approval of a project. The continued expenditures necessary for a capital improvement approved under this subsection shall not be eligible for funding provided in this chapter.” *Id.*

<sup>28</sup> Section 215.618, F.S.

<sup>29</sup> Section 259.105(4), F.S.

- The percentage increased in the number of occurrences of imperiled species on publicly managed conservation areas.<sup>30</sup>
- To protect, restore, and maintain the quality and natural functions of land, water, and wetland systems of the state, as measured by:
  - The number of acres of publicly owned land identified as needing, undergoing, or having restoration, enhancement, and management; the number of acres which represent actual or potential imperiled species habitat; the number of acres which are available to restore, enhance, repopulate, and manage imperiled species habitat;
  - The percentage of water segments that fully meet, partially meet, or do not meet their designated uses;
  - The percentage completion of targeted capital improvements in surface water improvement and management plans, regional or master stormwater management system plans, or other adopted restoration plans;
  - The number of acres acquired that protect natural floodplain functions;
  - The number of acres acquired that protect surface waters of the state;
  - The number of acres identified for acquisition to minimize damage from flooding and the percentage of those areas acquired;
  - The number of acres acquired that protect fragile coastal resources;
  - The number of acres of functional wetland systems protected;
  - The percentage of miles of critically eroding beaches contiguous with public lands that are restored or protected from further erosion;
  - The percentage of public lakes and rivers in which invasive, nonnative aquatic plants are under maintenance control; or
  - The number of acres of public conservation lands in which upland invasive, exotic plants are under maintenance control.<sup>31</sup>
- To ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state, as measured by:
  - The number of acres acquired that provide retention and storage of surface water in naturally occurring storage areas, such as lakes and wetlands, consistent with the maintenance of water resources or water supplies and consistent with district water supply plans;
  - The quantity of water made available through the water resource development component of a district water supply plan for which a water management district is responsible; or
  - The number of acres acquired of groundwater recharge areas critical to springs, sinks, aquifers, other natural systems, or water supply.<sup>32</sup>
- To mitigate the effects of natural disasters and floods in developed areas, as measured by:
  - The number of acres acquired within a 100-year floodplain or a coastal high hazard area;
  - The number of acres acquired or developed to serve dual functions as flow ways or temporary water storage areas during flooding or high water events, not including permanent reservoirs, and greenways or open spaces available to the public for recreation;

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<sup>30</sup> Section 259.105(4)(b), F.S.

<sup>31</sup> Section 259.105(4)(c), F.S.

<sup>32</sup> Section 259.105(4)(d), F.S.

- The number of acres that protect existing open spaces and natural buffer areas within a floodplain that also serve as natural flow ways or natural temporary water storage areas; and
- The percentage of the land acquired within the project boundary that creates additional open spaces, natural buffer areas, and greenways within a floodplain, while precluding rebuilding in areas that repeatedly flood.<sup>33</sup>

### **Land Acquisition Trust Fund**

The Land Acquisition Trust Fund (LATF) is established by s. 28 Art. X of the Florida Constitution. LATF funds may be expended for the following purposes:

- To finance or refinance the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands, including wetlands, forests, and fish and wildlife habitat;
- Wildlife management areas;
- Lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems;
- Lands in the Everglades Agricultural Area and the Everglades Protection Area;
- Beaches and shores;
- Outdoor recreation lands, including recreational trails, parks, and urban open spaces;
- Rural landscapes;
- Working farms and ranches;
- Historic or geologic sites;

Together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.<sup>34</sup>

### **III. Effect of Proposed Changes:**

This bill amends s. 373.036, F.S., to require water management districts, in cooperation with local governments, to develop a list of critical wetlands to be acquired through the Land Acquisition Trust Fund. The bill provides the following criteria to determine if a wetland is critical:

- The ecological value of the wetland, as determined by the physical and biological components of the environmental system;
- The effect of the wetland on water quality and flood mitigation;
- The ecosystem restoration value of the wetland; and
- The inherent susceptibility of the wetland to development due to its geographical location or natural aesthetics.

The bill directs each water management district's governing board to notify the owner of any property that the district contemplates including on the critical wetlands list before it adopts or amends the list. If at any time a property owner wishes to have their property removed from the

<sup>33</sup> Section 259.105(4)(i), F.S.

<sup>34</sup> FLA. CONST. art. X, s. 28.

list, they must submit by certified mail a letter stating they wish their property to be removed and sufficiently identifying such property to the governing board. The governing board shall approve removal if the requirements are met.

The bill additionally requires water management districts opting to utilize an annual strategic plan to include a list of critical wetlands on such plan.

The bill amends a reference to reflect the changes made in this bill. The bill will take effect July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Water management districts and local governments may incur costs.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 373.036 of the Florida Statutes.

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

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

**CS/CS by Rules on February 10, 2022:**

The CS directs each water management district's governing board to notify the owner of any property that the district contemplates including on the critical wetlands list before it adopts or amends the list. If at any time a property owner wishes to have their property removed from the list, they must submit by certified mail a letter stating they wish their property to be removed and sufficiently identifying such property to the governing board. The governing board shall approve removal if the requirements are met.

**CS by Community Affairs on February 2, 2022:**

The CS requires water management districts opting to utilize an annual strategic plan to include a list of critical wetlands on such plan.

**B. Amendments:**

None.



846854

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RS   | . |       |
| 02/10/2022 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Brodeur) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 24 - 35  
and insert:  
from the Land Acquisition Trust Fund.

1. The governing boards shall consider all of the following  
criteria in designating a wetland for inclusion on the list:

a. The ecological value of the wetland, as determined by  
the physical and biological components of the environmental  
system.

b. The effect of the wetland on water quality and flood



846854

mitigation.

c. The ecosystem restoration value of the wetland.

d. The inherent susceptibility of the wetland to  
development due to its geographical location or natural  
aesthetics.

2. A landowner who wishes to have his or her property  
removed from the list must submit by certified mail a letter  
requesting that his or her property be removed and sufficiently  
identify such property to the governing board of the water  
management district. The governing board shall approve a removal  
request that meets the requirements of this subparagraph at its  
next regularly scheduled meeting.

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

And the title is amended as follows:

Delete line 9

and insert:

the list; requiring landowners who wish to have their  
property removed from the list to submit a certified  
letter requesting removal; providing requirements for  
any such request; requiring a governing board to  
approve such removal if the request meets those  
requirements; providing the timeframe for approval of  
requests; revising minimum requirements for annual  
strategic plans; providing an effective date.





187630

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 02/10/2022 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Brodeur) recommended the following:

**Senate Substitute for Amendment (846854) (with title amendment)**

Delete lines 24 - 35  
and insert:  
from the Land Acquisition Trust Fund.

1. The governing boards shall consider all of the following criteria in designating a wetland for inclusion on the list:

a. The ecological value of the wetland, as determined by the physical and biological components of the environmental system.



187630

b. The effect of the wetland on water quality and flood mitigation.

c. The ecosystem restoration value of the wetland.

d. The inherent susceptibility of the wetland to development due to its geographical location or natural aesthetics.

2. Before adopting or amending its list of critical wetlands, each governing board must notify the owner of any property that the district contemplates including on the list. At any time, an owner who wishes to have his or her property removed from the list must submit by certified mail to the district a letter requesting such removal. The letter must indicate that the owner wishes for his or her property to be removed from the list and must sufficiently identify such property to the governing board. The governing board shall approve a removal request that meets the requirements of this subparagraph at its next regularly scheduled meeting.

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

And the title is amended as follows:

Delete lines 7 - 9

and insert:

Acquisition Trust Fund; requiring the governing boards to consider certain criteria when including wetlands on the list and to notify owners of property contemplated to be included on the list; requiring owners who wish to have their property removed from the list to submit a certified letter requesting removal; providing requirements for any such request;



187630

41        requiring a governing board to approve such removal if  
42        the request meets those requirements; providing the  
43        timeframe for approval of requests; revising minimum  
44        requirements for annual strategic plans; providing an  
45        effective date.

By the Committee on Community Affairs; and Senator Brodeur

578-02645-22

2022882c1

A bill to be entitled

An act relating to inventories of critical wetlands; amending s. 373.036, F.S.; requiring each water management district governing board, in cooperation with local governments, to develop a list of critical wetlands for acquisition using funds from the Land Acquisition Trust Fund; requiring the boards to consider certain criteria when including wetlands on the list; providing an effective date.

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

Section 1. Present paragraph (e) of subsection (2) of section 373.036, Florida Statutes, is redesignated as paragraph (f), a new paragraph (e) is added to that subsection, and present paragraph (e) of that subsection and paragraph (b) of subsection (7) of that section are amended, to read:

373.036 Florida water plan; district water management plans.—

(2) DISTRICT WATER MANAGEMENT PLANS.—

(e) As part of the district water management plan, each governing board, in cooperation with local governments, shall develop a list of critical wetlands to be acquired using funds from the Land Acquisition Trust Fund. The governing boards shall consider all of the following criteria in designating a wetland for inclusion on the list:

1. The ecological value of the wetland, as determined by the physical and biological components of the environmental system.

Page 1 of 4

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

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2. The effect of the wetland on water quality and flood mitigation.

3. The ecosystem restoration value of the wetland.

4. The inherent susceptibility of the wetland to development due to its geographical location or natural aesthetics.

~~(f) (e)~~ At its option, a governing board may substitute an annual strategic plan for the requirement to develop a district water management plan and the district water management plan annual report required by subparagraph (7)(b)1., provided that nothing herein affects any other provision or requirement of law concerning the completion of the regional water supply plan and the strategic plan meets the following minimum requirements:

1. The strategic plan establishes the water management district's strategic priorities for at least a future 5-year period.

2. The strategic plan identifies the goals, strategies, success indicators, funding sources, deliverables, and milestones to accomplish the strategic priorities.

3. The strategic plan development process includes at least one publicly noticed meeting to allow public participation in its development.

4. The strategic plan includes separately, as an addendum, an annual work plan report on the implementation of the strategic plan for the previous fiscal year, addressing success indicators, deliverables, and milestones.

5. The strategic plan includes a list of critical wetlands to be acquired using funds from the Land Acquisition Trust Fund, pursuant to paragraph (e).

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(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

(b) The consolidated annual report shall contain the following elements, as appropriate to that water management district:

1. A district water management plan annual report or the annual work plan report allowed in subparagraph (2)(f)4.

~~(2)(e)4.~~

2. The department-approved minimum flows and minimum water levels annual priority list and schedule required by s. 373.042(3).

3. The annual 5-year capital improvements plan required by s. 373.536(6)(a)3.

4. The alternative water supplies annual report required by s. 373.707(8)(n).

5. The final annual 5-year water resource development work program required by s. 373.536(6)(a)4.

6. The Florida Forever Water Management District Work Plan annual report required by s. 373.199(7).

7. The mitigation donation annual report required by s. 373.414(1)(b)2.

8. Information on all projects related to water quality or water quantity as part of a 5-year work program, including:

a. A list of all specific projects identified to implement a basin management action plan, including any projects to connect onsite sewage treatment and disposal systems to central sewerage systems and convert onsite sewage treatment and disposal systems to enhanced nutrient-reducing onsite sewage treatment and disposal systems, or a recovery or prevention strategy;

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b. A priority ranking for each listed project for which state funding through the water resources development work program is requested, which must be made available to the public for comment at least 30 days before submission of the consolidated annual report;

c. The estimated cost for each listed project;

d. The estimated completion date for each listed project;

e. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project; and

f. A quantitative estimate of each listed project's benefit to the watershed, water body, or water segment in which it is located.

9. A grade for each watershed, water body, or water segment in which a project listed under subparagraph 8. is located representing the level of impairment and violations of adopted minimum flow or minimum water levels. The grading system must reflect the severity of the impairment of the watershed, water body, or water segment.

Section 2. This act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kathleen Passidomo, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 3, 2022

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I respectfully request that **Senate Bill 882**, relating to **Inventories of Critical Wetlands**, be placed on the:

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

A handwritten signature in black ink that reads "Jason Brodeur".

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Senator Jason Brodeur  
Florida Senate, District 9

## **Bill Summary**

**SB 882 directs water management district governing boards to work with local governments to develop a list of critical wetlands to be acquired through the Land Acquisition Trust Fund and to consider certain criteria when including wetlands on the list.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 896

INTRODUCER: Education Committee and Senator Burgess

SUBJECT: Educator Certification Pathways for Veterans

DATE: February 8, 2022

REVISED: \_\_\_\_\_

| ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION           |
|----------|----------------|-----------|------------------|
| 1. Lloyd | Caldwell       | MS        | <b>Favorable</b> |
| 2. Brick | Bouck          | ED        | <b>Fav/CS</b>    |
| 3. Lloyd | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 896 creates an additional pathway for veterans to qualify for educator certification. The bill removes the requirement that an applicant for a temporary educator certificate hold a baccalaureate degree if the applicant has completed:

- At least 48 months of active-duty military service with an honorable discharge or medical separation; and
- At least 60 college credits with a minimum cumulative grade point average of 2.5 on a 4.0 scale, as provided by one or more accredited institutions of higher learning or a nonaccredited institution of higher learning that the Department of Education has identified as having a quality program resulting in a bachelor's degree or higher.

The exception in the bill authorizing a temporary certificate for less than a baccalaureate degree applies only to subject area specializations requiring only a bachelor's degree. The bill provides that a temporary certificate issued under this pathway is valid for five school fiscal years and is nonrenewable.

The bill also removes the requirement for an honorably discharged veteran to have served on active duty to qualify for the waiver of initial general knowledge, professional education, and subject area examination fees and certification fees.

The bill takes effect July 1, 2022.



## II. Present Situation:

Florida's public school system enrolls approximately 2.8 million students annually across 67 school districts in grades pre-Kindergarten through 12.<sup>1</sup> During the 2020-2021 school year, these students were supported by almost 340,000 personnel in administrative, instructional, and support positions, with 60 percent identified as instructional staff.<sup>2</sup> Teachers represent 87 percent of instructional personnel.<sup>3</sup> Instructional staff also include other personnel who interact with students outside of the traditional classroom setting, such as guidance counselors, librarians, social workers, and school psychologists.

### **Educator Certification Requirements**

Educational personnel in public schools must possess appropriate skills in reading, writing, and mathematics; adequate pedagogical knowledge; and relevant subject matter competence so as to demonstrate an acceptable level of professional performance.<sup>4</sup>

The State Board of Education (SBE) designates the certification subject areas, establishes competencies, and adopts rules in accordance with which education certificates are issued by the Department of Education (DOE) to applicants who meet the requirements.<sup>5</sup>

### ***Initial Eligibility***

In order to seek educator certification, a person must attest to uphold the principles of the United States (U.S.) and meet other general eligibility requirements, which include receipt of a bachelor's or higher degree from an approved postsecondary institution and minimum age, background screening, moral character, and competence requirements.<sup>6</sup>

### ***Professional Educator Certificate***

A professional certificate is awarded to an applicant who meets the basic eligibility requirements for certification and demonstrates mastery of:<sup>7</sup>

- General knowledge, only if serving as a classroom teacher;
- Subject area knowledge; and
- Professional preparation and education competence.

Mastery of general knowledge may be demonstrated through several methods, including the passing of one of several different examinations identified by the SBE, having a teacher

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<sup>1</sup> Florida Department of Education, *About Us*, <https://www.fldoe.org/about-us/> (last visited Jan. 28, 2022).

<sup>2</sup> Florida Department of Education, *Staff in Florida Public Schools – Full Time Staff Summary, 2020-21, Final Summary 2, State/District Level Report*, <https://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/staff.html> (last visited Jan. 28, 2022).

<sup>3</sup> Florida Department of Education, *Staff in Florida's Public Schools, Full-Time Instructional Staff Summary, 2020-2021, Final Survey 2, State/District Report*, <https://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/staff.html> (last visited Jan. 28, 2022).

<sup>4</sup> Section 1012.54, F.S.

<sup>5</sup> Section 1012.55(1)(a), F.S.

<sup>6</sup> Section 1012.56(2), F.S., and Rule 6A-4.003, F.A.C.

<sup>7</sup> Section 1012.56(2)(g)-(i), F.S.

education certification from another state, or teaching at a state college or university or private college level for a minimum of two semesters in either full-time or part-time status.<sup>8</sup>

Acceptable means of demonstrating mastery of subject area knowledge are specified in law and include passing a subject area or other alternative examination as approved by the SBE, a valid teaching certificate from another state, a valid certificate from the National Board for Professional Teaching Standards (NBPTS), or a passing score or program completion of a specified defense language proficiency test or program.<sup>9</sup>

A candidate for a professional certificate may demonstrate professional preparation and education competence through completion of a teacher preparation program and a passing score on the corresponding professional education competency exam required by the SBE.<sup>10</sup> Other means include:<sup>11</sup>

- Documentation of a valid professional standard teaching certificate issued by another state, the NBPTS, or a national educator credentialing board approved by the SBE.
- Passing the professional education competency examination and documentation of two semesters of successful, full-time or part-time teaching in a state college or university or a private college or university approved by the DOE.
- Successful completion of professional preparation courses, successful completion of a professional preparation and education competence program, and achievement of a passing score on the professional education competency examination;
- Successful completion of a professional development certification and education competency program.
- Successful completion of a competency-based certification program and achievement of a passing score on the professional education competency.

### ***Teacher Preparation Programs***

Teacher preparation programs are accountable for producing individuals with the competencies and skills necessary to achieve state education goals.<sup>12</sup> Each teacher preparation program must be approved by the DOE based on criteria specified in law.<sup>13</sup> Teacher preparation programs result in qualification for an initial Florida Professional Educator's Certificate and include:<sup>14</sup>

- Initial teacher preparation programs, which are offered by Florida postsecondary institutions to prepare instructional personnel.
- Educator preparation institutes, which are offered by Florida postsecondary or qualified private providers that provide instruction for non-education baccalaureate or higher degree holders.

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<sup>8</sup> Section 1012.56(3), F.S.; and Fla Admin. Code. R. 6A-4.004(2020).

<sup>9</sup> Section 1012.56(5), F.S.

<sup>10</sup> Florida Department of Education, *Competencies and Skills Required for Teacher Certification in Florida* (Oct. 1, 2020), incorporated by reference in rule 6A-4.0021, F.A.C., available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-10344>.

<sup>11</sup> Section 1012.56(6), F.S.

<sup>12</sup> Section 1004.04(1)(b), F.S.

<sup>13</sup> Section 1004.04(3), F.S.

<sup>14</sup> Section 1004.04, F.S.; Rule 6A-5.066(1)(k), (r), and (y), F.A.C.

- Professional development certification programs, in which a school district, charter school, or charter management organization may provide instruction for members of its instructional staff who are non-education baccalaureate or higher degree holders.

Before program completion, each candidate must demonstrate his or her ability to positively impact student learning growth in the candidate's area or areas of program concentration during a prekindergarten through grade 12 field experience and must pass each portion of the Florida Teacher Certification Examination required for a professional certificate in the area or areas of program concentration.<sup>15</sup>

### ***Temporary Educator Certificate***

A temporary teaching certificate is valid for 3 school fiscal years and is nonrenewable.<sup>16</sup> The DOE is required by law to issue a temporary certificate to any applicant who:<sup>17</sup>

- Completes applicable subject area content requirements or demonstrates mastery of subject area knowledge by, for example, successful completion of an approved exam; and
- Holds an accredited degree or a degree approved by the DOE at the level required for the subject area specialization in state board rule.

The DOE offers a variety of pathways to transition from a temporary to professional teaching certification, including certification programs, professional training programs, and professional preparation college courses.<sup>18</sup>

A professional education competence program allows instructional personnel with a temporary certificate may demonstrate mastery of professional preparation and education competence through classroom application of Florida's core standards for effective educators and instructional performance.<sup>19</sup>

### ***Additions to Certificates***

Once an educator holds a valid Florida Temporary or Professional Certificate, the educator may be eligible to add another subject coverage according to subject specialization requirements in the SBE rule.<sup>20</sup> Add-on programs are offered by colleges, universities, and school districts and must be approved by the department. Currently, 34 school districts operate their own certification add-on programs.<sup>21</sup>

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<sup>15</sup> Section 1004.04(2)(d), F.S.

<sup>16</sup> Section 1012.56(7), F.S.

<sup>17</sup> Section 1012.56(7)(b), F.S.

<sup>18</sup> Florida Department of Education, Certification Pathways and Routes, *Pathways to Upgrade from a Temporary to a Professional Certificate*, <https://www.fldoe.org/teaching/certification/pathways-routes/> (last visited Jan. 3, 2022).

<sup>19</sup> Rule 6A-5.066(1)(u), F.A.C.

<sup>20</sup> Florida Department of Education, *Certificate Additions*, <https://www.fldoe.org/teaching/certification/additions/> (last visited December 10, 2021).

<sup>21</sup> Florida Department of Education, *Professional Development Certification Programs*, <https://www.fldoe.org/teaching/preparation/pdcp.stml> (last visited Jan. 28, 2022).

**Non-certificated Personnel**

District school boards are authorized to employ selected non-certificated personnel to provide instructional services in the individuals' fields of specialty or assist instructional staff members as education paraprofessionals.<sup>22</sup> School board and charter school governing board policies for non-certificated instructional are required to include specified provisions to create parity with certificated personnel. For example, policies are required to assure that non-certificated personnel possess the necessary relevant knowledge and a clear understanding of all relevant instructional practices and policies.<sup>23</sup>

***Out-of-Field Instructors***

An instructor may be approved by the district school board or charter school governing board to teach a field in which the instructor lacks certification after a determination that a teacher with appropriate certification coverage is not available. While employed, approved out-of-field instructors must satisfy specified college credit or equivalent inservice training in an approved district add-on program or district approved subject content professional development program.<sup>24</sup>

Out of 644,437 courses in public schools that received a school grade in 2018-19, 6.79 percent were taught by an out-of-field instructor.<sup>25</sup>

***Adjunct Teachers***

District school boards are also authorized to issue an adjunct teaching certificate to any applicant who satisfies general eligibility requirements for certification and has expertise in the subject area to be taught. An applicant is considered to have expertise in the subject area if the applicant demonstrates sufficient subject area mastery through passage of a subject area test.<sup>26</sup>

***Non-Degreed Teachers of Career Education***

Qualifications for part-time and full-time non-degreed teachers of career and technical education programs are based primarily on successful occupational experience rather than academic training.<sup>27</sup> A holder of a certificate based on nonacademic preparation which entitled him or her to employment to teach classes in career or adult education may not be assigned to teach in a regular academic field of the kindergarten through grade 12 school program.<sup>28</sup>

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<sup>22</sup> Section 1012.55(1)(c), F.S.

<sup>23</sup> Rule 6A-1.0502, F.A.C.

<sup>24</sup> Rule 6A-1.0503(3), F.A.C.

<sup>25</sup> Florida Department of Education, *Identification of Critical Teacher Shortage Areas for 2021-2022*, available at <https://www.fldoe.org/core/fileparse.php/7766/urlt/CTSA2122.pdf>, at 9.

<sup>26</sup> Section 1012.57(1), F.S.

<sup>27</sup> Section 1012.43, F.S.

<sup>28</sup> Section 1012.43(2), F.S.

## **Military Personnel, Veterans, and Spouses**

### ***Fee Waivers***

The SBE is required to waive initial general knowledge, professional education, and subject area examination fees and certification fees for:<sup>29</sup>

- A member of the U.S. Armed Forces or a reserve component thereof who is serving or has served on active duty or the spouse of such a member.
- The surviving spouse of a member of the U.S. Armed Forces or a reserve component thereof who was serving on active duty at the time of death.
- An honorably discharged veteran of the U.S. Armed Forces or a veteran of a reserve component thereof who served on active duty and the spouse or surviving spouse of such a veteran.

A fee waiver is valid for up to five years after the veteran or his or her spouse is determined eligible and can be requested online.<sup>30</sup>

### ***Military Extensions to Certificates***

If an educator with a temporary certificate is called to active duty or volunteers, whether in wartime or peacetime, the educator may request an extension of time to his or her temporary certificate equal to the amount of time spent in service. A spouse of an active duty service member or reserve unit may also request a two-year military extension to a temporary certificate to complete the requirements for a Professional Certificate.<sup>31</sup>

### ***Federal Troops to Teachers Program***

In 1993, the Department of Defense (DOD) established the Troops to Teachers (TTT) program to assist transitioning service members and veterans in beginning careers as school teachers. The program provided counseling and referral services to assist members and veterans in meeting education and licensing requirements to secure a teaching position.<sup>32</sup>

Within the program, the DOD provided assistance of up to \$5,000 to eligible members to obtain certification or licensing as educators, and up to \$10,000 in bonuses to participants who agree to teach in high-poverty schools.<sup>33</sup>

Members of the armed forces who wish to receive the program's assistance for placement are required to have a bachelor's or advanced degree, and priority is given to those members who

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<sup>29</sup> Section 1012.59(3), F.S.

<sup>30</sup> Rule 6A-4.0012(8)(e), F.A.C.

<sup>31</sup> Section 1012.56(7)(c), F.S.

<sup>32</sup> United States Army, *Troops to Teachers (TTT)*, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Troops-to-Teachers-\(TTT\)?serv=122](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Troops-to-Teachers-(TTT)?serv=122) (last visited Jan. 28, 2022).

<sup>33</sup> U.S. Department of Education, *Troops to Teachers Program*, <https://www2.ed.gov/programs/troops/index.html> (last visited Jan. 12, 2022).

have educational or military experience in science, mathematics, special education, or vocational/technical subjects.<sup>34</sup> To receive the stipend, participants are required to:<sup>35</sup>

- Be enrolled in an accredited institution that would result in licensure as a full-time teacher;
- Commit to full-time teaching in an eligible or high need school for three years; and
- If not retired or discharged due to service-connected physical disability, commit to serving three years in reserves.

The program's goals include reducing veteran unemployment, increasing the number of male and minority teachers in classrooms, and addressing the teacher shortage issues in schools that serve low-income families and in the critical subject areas including math, science, special education, foreign language, and career and technical education. Since the program's launch in 1993, more than 100,000 veterans have transitioned to a career in education.<sup>36</sup>

The TTT program was extended through July 1, 2025, in the National Defense Authorization Act for Fiscal Year 2022.<sup>37</sup>

### III. Effect of Proposed Changes:

CS/SB 896 creates an additional pathway for veterans to qualify for educator certification. The bill removes the requirement that an applicant for a temporary educator certificate hold a baccalaureate degree if the applicant has completed:

- At least 48 months of active-duty military service with an honorable discharge or medical separation; and
- At least 60 college credits with a minimum cumulative grade point average of 2.5 on a 4.0 scale, as provided by one or more accredited institutions of higher learning or a nonaccredited institution of higher learning that the Department of Education has identified as having a quality program resulting in a bachelor's degree or higher.

The exception in the bill authorizing a temporary certificate for less than a baccalaureate degree applies only to subject area specializations requiring only a bachelor's degree. A temporary certificate issued under this pathway is valid for five school fiscal years and is nonrenewable.

The bill requires that temporary certificate holders be assigned a teacher mentor during their first two years of employment. The teacher mentor must hold a valid professional teaching certification, have at least three years of teaching experience, and have earned an effective or highly effective rating on the prior year's performance evaluation.

The bill also removes the requirement for an honorably discharged veteran to have served on active duty to qualify for the waiver of initial general knowledge, professional education, and subject area examination fees and certification fees.

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<sup>34</sup> U.S. Department of Education, *Troops to Teachers Program*, <https://www2.ed.gov/programs/troops/index.html> (last visited Jan. 12, 2022).

<sup>35</sup> United States Army, *Troops to Teachers (TTT)*, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Troops-to-Teachers-\(TTT\)?serv=122](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Troops-to-Teachers-(TTT)?serv=122) (last visited Jan. 28, 2022).

<sup>36</sup> United States Army, *Troops to Teachers (TTT)*, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Troops-to-Teachers-\(TTT\)?serv=122](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Troops-to-Teachers-(TTT)?serv=122) (last visited Jan. 28, 2022).

<sup>37</sup> Pub. L. No. 117-81, s. 1605 (Dec. 27, 2021).

The potential availability of additional educators, especially as Florida faces a teacher shortage in certain regions and in specific instructional subject matters could provide district school board with enhanced options and expanded personnel choices. Experienced military leaders who have mentored and educated military service members for years may have skills and experiences that can translate easily to the classroom and would be a ready-made workforce for Florida's public and charter schools and could address short and long-term workforce needs.

The bill takes effect July 1, 2022.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 1012.56 and 1012.59 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Education on February 1, 2022:**

The committee substitute:

- Clarifies that the provision in the bill that provides a waiver of the requirement that an applicant for an educator certificate possess a baccalaureate degree applies only to a temporary certificate.
- Requires veterans that are issued a temporary certificate without a baccalaureate degree under the bill to be assigned a teacher mentor for a minimum of 2 school years commencing employment.

- B. **Amendments:**

None.



By the Committee on Education; and Senator Burgess

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A bill to be entitled

An act relating to educator certification pathways for veterans; amending s. 1012.56, F.S.; authorizing the Department of Education to issue a temporary certificate to specified military servicemembers who meet certain criteria; requiring a teacher mentorship for specified military servicemembers who hold a temporary certificate; specifying the duration and issuance of a temporary certificate for specified military servicemembers; amending s. 1012.59, F.S.; making a technical change; providing an effective date.

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

Section 1. Subsection (7) of section 1012.56, Florida Statutes, is amended to read:

1012.56 Educator certification requirements.—

(7) TYPES AND TERMS OF CERTIFICATION.—

(a) The Department of Education shall issue a professional certificate for a period not to exceed 5 years to any applicant who fulfills one of the following:

1. Meets all the applicable requirements outlined in subsection (2).

2. For a professional certificate covering grades 6 through 12:

a. Meets the applicable requirements of paragraphs (2)(a)–

(h).

b. Holds a master's or higher degree in the area of

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science, technology, engineering, or mathematics.

c. Teaches a high school course in the subject of the advanced degree.

d. Is rated highly effective as determined by the teacher's performance evaluation under s. 1012.34, based in part on student performance as measured by a statewide, standardized assessment or an Advanced Placement, Advanced International Certificate of Education, or International Baccalaureate examination.

e. Achieves a passing score on the Florida professional education competency examination required by state board rule.

3. Meets the applicable requirements of paragraphs (2)(a)–(h) and completes a professional preparation and education competence program approved by the department pursuant to paragraph (8)(c) or an educator preparation institute approved by the department pursuant to s. 1004.85. An applicant who completes one of these programs and is rated highly effective as determined by his or her performance evaluation under s. 1012.34 is not required to take or achieve a passing score on the professional education competency examination in order to be awarded a professional certificate.

(b) The department shall issue a temporary certificate to any applicant who:

1. Completes the requirements outlined in paragraphs (2)(a)–(f) and completes the subject area content requirements specified in state board rule or demonstrates mastery of subject area knowledge pursuant to subsection (5) and holds an accredited degree or a degree approved by the Department of Education at the level required for the subject area

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specialization in state board rule; or

2. For a subject area specialization for which the state board otherwise requires a bachelor's degree, documents 48 months of active-duty military service with an honorable discharge or a medical separation; completes the requirements outlined in paragraphs (2)(a), (b), (d), (e), and (f); completes the subject area content requirements specified in state board rule or demonstrates mastery of subject area knowledge pursuant to subsection (5); and documents completion of 60 college credits with a minimum cumulative grade point average of 2.5 on a 4.0 scale, as provided by one or more accredited institutions of higher learning or a nonaccredited institution of higher learning identified by the Department of Education as having a quality program resulting in a bachelor's degree or higher.

(c) The department shall issue one nonrenewable 2-year temporary certificate and one nonrenewable 5-year professional certificate to a qualified applicant who holds a bachelor's degree in the area of speech-language impairment to allow for completion of a master's degree program in speech-language impairment.

(d) A person who is issued a temporary certificate under subparagraph (b)2. must be assigned a teacher mentor for a minimum of 2 school years after commencing employment. Each teacher mentor selected by the school district, charter school, or charter management organization must:

1. Hold a valid professional certificate issued pursuant to s. 1012.56;

2. Have earned at least 3 years of teaching experience in prekindergarten through grade 12; and

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3. Have earned an effective or highly effective rating on the prior year's performance evaluation under s. 1012.34.

(e)1. A ~~each~~ temporary certificate issued under subparagraph (b)1. is valid for 3 school fiscal years and is nonrenewable.

2. A temporary certificate issued under subparagraph (b)2. is valid for 5 school fiscal years, is limited to a one-time issuance, and is nonrenewable.

At least 1 year before an individual's temporary certificate is set to expire, the department shall electronically notify the individual of the date on which his or her certificate will expire and provide a list of each method by which the qualifications for a professional certificate can be completed. The State Board of Education shall adopt rules to allow the department to extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate were not completed due to the serious illness or injury of the applicant, the military service of an applicant's spouse, other extraordinary extenuating circumstances, or if the certificateholder is rated highly effective in the immediate prior year's performance evaluation pursuant to s. 1012.34 or has completed a 2-year mentorship program pursuant to s. 1012.56(8). The department shall extend the temporary certificate upon approval by the Commissioner of Education. A written request for extension of the certificate shall be submitted by the district school superintendent, the governing authority of a university lab school, the governing authority of a state-supported school, or the governing

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authority of a private school.

Section 2. Paragraph (c) of subsection (3) of section 1012.59, Florida Statutes, is amended to read:

1012.59 Certification fees.—

(3) The State Board of Education shall waive initial general knowledge, professional education, and subject area examination fees and certification fees for:

(c) An honorably discharged veteran of the United States Armed Forces or a veteran of a reserve component thereof ~~who served on active duty~~ and the spouse or surviving spouse of such a veteran.

Section 3. This act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kathleen Passidomo, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 3, 2022

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I respectfully request that **Senate Bill #896**, relating to Educator Certification Pathways for Veterans, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Danny", is written above a horizontal line.

Senator Danny Burgess  
Florida Senate, District 20

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
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2/10

Meeting Date

896

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name Edward Briggs

Phone \_\_\_\_\_

Address \_\_\_\_\_  
Street

Email \_\_\_\_\_

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

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S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 944

INTRODUCER: Senator Baxley

SUBJECT: Online Marketplace Transparency

DATE: February 8, 2022

REVISED: \_\_\_\_\_

| ANALYST            | STAFF DIRECTOR | REFERENCE | ACTION             |
|--------------------|----------------|-----------|--------------------|
| 1. <u>McMillan</u> | <u>McKay</u>   | <u>CM</u> | <b>Favorable</b>   |
| 2. <u>Hunter</u>   | <u>Ryon</u>    | <u>CA</u> | <b>Favorable</b>   |
| 3. <u>McMillan</u> | <u>Phelps</u>  | <u>RC</u> | <b>Pre-meeting</b> |

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## I. Summary:

SB 944 creates s. 559.953, F.S., which establishes that an online marketplace must require high-volume third-party sellers to provide the online marketplace with verification and disclosure information. Additionally, an online marketplace must require high-volume third-party sellers with an aggregate total of \$20,000 or more in annual gross revenues on its online platform to provide consumers with disclosure information.

The bill requires an online marketplace to provide consumers with a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace and a message encouraging individuals seeking to purchase products to report suspicious activity to the online marketplace.

The bill provides that a violation of s. 559.953, F.S., constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, and the Department of Legal Affairs may adopt rules to collect and verify the required information. Additionally, regulation under s. 559.953, F.S., is preempted to the Department of Legal Affairs.

The bill takes effect July 1, 2022.

## II. Present Situation:

### **Florida Deceptive and Unfair Trade Practices Act (FDUTPA)**

#### ***History and Purpose of FDUTPA***

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.<sup>1</sup> The FDUTPA is a consumer and business protection measure that prohibits unfair methods of

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<sup>1</sup> Ch. 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.<sup>2</sup> The FDUTPA is based on federal law, and s. 501.204(2), F.S., provides that it is the intent of the Legislature that due consideration and great weight must be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5 of the Federal Trade Commission Act.<sup>3</sup>

The State Attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.<sup>4</sup> The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.<sup>5</sup> The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.<sup>6</sup> Consumers may also file suit through private actions.<sup>7</sup>

### ***Remedies under the FDUTPA***

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.<sup>8</sup>

Remedies for private parties are limited to the following:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.<sup>9</sup>

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<sup>2</sup> See s. 501.202, F.S. Trade or commerce means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity. See s. 501.203(8), F.S.

<sup>3</sup> See s 501.204(2), F.S.

<sup>4</sup> See ss. 501.203(2), 501.206, and 501.207, F.S.

<sup>5</sup> Section 501.203(2), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 501.211, F.S.

<sup>8</sup> Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

<sup>9</sup> Section 501.211(1) and (2), F.S.

## Federal Unfair and Deceptive Trade Practices

The Federal Trade Commission's (FTC's) unfair and deceptive trade practices regulations prohibit unfair<sup>10</sup> or deceptive<sup>11</sup> acts or practices in or affecting commerce.<sup>12</sup> The FTC's regulations include "Truth In Advertising" guidelines, which require advertisements to be truthful, not misleading, and, when appropriate, backed by scientific evidence.<sup>13</sup> To enforce these regulations, the FTC takes law enforcement actions, provides consumer and business education, issues reports and policy guidance, leads workshops, and participates in other forums.<sup>14</sup>

The FTC also provides "online shopping" guidance to consumers.<sup>15</sup> The guidance includes confirming an online seller's physical address and phone number, scrutinizing details provided about a product, paying with credit card, keeping records of any transaction, and protecting personal information.<sup>16</sup> Additionally, the FTC offers resources on how to compare products online, as well as where to go to report online shopping fraud.<sup>17</sup>

## E-commerce Marketplace

As e-commerce grows, the sale of counterfeit goods alongside authentic products continues to be a concern.<sup>18</sup> In 2020, the Department of Homeland Security published a report detailing potential strategies and policies to combat the trade of counterfeit goods.<sup>19</sup> According to the report, e-commerce platforms enable counterfeiters to produce products at lower prices, while also reaching a larger number of potential customers.<sup>20</sup> The report points to a scenario where third-party marketplace websites contain photos of the real product, fake reviews of the counterfeit product, and other information designed to mislead consumers.<sup>21</sup>

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<sup>10</sup> An "unfair" practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. See 15 U.S.C. Sec. 45(n).

<sup>11</sup> A "deceptive" practice involves a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances. See FTC Policy Statement on Deception (Oct. 14, 1983) available at [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf) (last visited Jan. 14, 2022). See also Federal Trade Commission, *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority* (revised, May 2021) available at <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority> (last visited Jan. 14, 2022).

<sup>12</sup> 15 U.S.C. s. 45(a)(1).

<sup>13</sup> Federal Trade Commission, *Truth In Advertising*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising> (last visited Jan. 14, 2022).

<sup>14</sup> Federal Trade Commission, *Protecting Consumers from Fraud and Deception*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising/protecting-consumers> (last visited Jan. 14, 2022).

<sup>15</sup> See Federal Trade Commission, *Shopping Online*, available at <https://www.consumer.ftc.gov/articles/0020-shopping-online> (last visited Jan. 14, 2022).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* See also Federal Trade Commission, *Comparison Shopping*, available at <https://www.consumer.ftc.gov/shopping> (last visited Jan. 14, 2022).

<sup>18</sup> See Department of Homeland Security, *Combating Trafficking in Counterfeit and Pirated Goods* (Jan. 24, 2020), available at [https://www.dhs.gov/sites/default/files/publications/20\\_0124\\_plcy\\_counterfeit-pirated-goods-report\\_01.pdf](https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf) (last visited Jan. 14, 2022).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 21.

<sup>21</sup> *Id.* at 22.



The report also discusses how the online marketplace is changing consumer attitudes and perceptions.<sup>22</sup> For instance, shopping online makes it harder for consumers to identify what the report calls traditional “red flag” indicators, which has the potential to cause safety risks when consumers rely on false claims that certain products have health or safety certificates.<sup>23</sup> The report points out that this dynamic creates a lack of consumer trust, as well as harming the reputation of brands or businesses.<sup>24</sup>

In 2019, the Organization for Economic Cooperation and Development (OECD) in partnership with the EU Intellectual Property Office also published a study detailing trends in counterfeit and pirated goods.<sup>25</sup> According to the OECD, trade in fake goods infringe on trademarks and copyright, while also potentially harming the health and safety of consumers.<sup>26</sup> The OECD reported that counterfeit and pirated goods were steadily rising, and in March of 2019, accounted for 3.3 percent of global trade.<sup>27</sup>

### Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.<sup>28</sup>

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>29</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>30</sup> In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.<sup>31</sup>

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.<sup>32</sup> Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.<sup>33</sup> Preemption of a

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<sup>22</sup> *Id.* at 14.

<sup>23</sup> *Id.* at 15.

<sup>24</sup> *Id.*

<sup>25</sup> See Organization for Economic Cooperation and Development, *Trends in Trade in Counterfeit and Pirated Goods* (2019), available at [https://read.oecd-ilibrary.org/trade/trends-in-trade-in-counterfeit-and-pirated-goods\\_g2g9f533-en#page1](https://read.oecd-ilibrary.org/trade/trends-in-trade-in-counterfeit-and-pirated-goods_g2g9f533-en#page1) (last visited Jan. 14, 2022).

<sup>26</sup> See Organization for Economic Cooperation and Development, *Trade in Fake Goods is now 3.3% of World Trading and Rising* (March 18, 2019), available at [www.oecd.org/newsroom/trade-in-fake-goods-is-now-33-of-world-trade-and-rising.htm](http://www.oecd.org/newsroom/trade-in-fake-goods-is-now-33-of-world-trade-and-rising.htm) (last visited Jan. 14, 2022).

<sup>27</sup> *Id.*

<sup>28</sup> See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

<sup>29</sup> See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

<sup>30</sup> *Mulligan*, 934 So.2d at 1243.

<sup>31</sup> *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

<sup>32</sup> See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

<sup>33</sup> *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.<sup>34</sup> Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.<sup>35</sup>

### III. Effect of Proposed Changes:

The bill creates s. 559.953, F.S., and provides the following definitions:

- “Consumer product” means a product that is used or bought for use primarily for personal, family, or household purposes;
- “High-volume third-party seller” means a participant in an online marketplace that is a third-party seller and who, in any continuous 12-month period during the previous 24-months, has entered into 200 or more discrete sales or transactions of new or unused consumer products resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues;<sup>36</sup>
- “Online marketplace” means any consumer-directed electronically based or accessed platform that includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States, is used by one or more third-party sellers for such purposes, and has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products;
- “Seller” means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace;
- “Third-party seller” means any seller, independent of an operator, a facilitator, or an owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace;<sup>37</sup> and
- “Verify” means to confirm information and documentation provided to an online marketplace by the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided which correspond to the seller or an individual acting on the seller’s behalf are valid, not misappropriated, and not falsified.

The bill establishes that an online marketplace must require high-volume third-party sellers to provide the online marketplace with the following information within 10 business days after qualifying as a high-volume third-party seller:

- Deposit account information from a financial institution;
- Contact information;<sup>38</sup> and

<sup>34</sup> *Id.*

<sup>35</sup> *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

<sup>36</sup> Only sales or transactions made through the online marketplace for which payment was processed by the online marketplace, either directly or through the seller’s payment processor, count towards the calculation for the number of discrete sales or transactions or gross revenues.

<sup>37</sup> The term “third-party seller” does not include, with respect to an online marketplace: a seller that operates the online marketplace; a business entity that has made available to the general public the entity’s name, business address, and working contact information; a business entity with an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; or a business entity that has provided to the online marketplace identifying information that has been verified.

<sup>38</sup> Contact information includes: a valid e-mail address and working phone number; if the high-volume third-party seller is an individual, a copy of a valid government-issued photo identification for the individual which includes the individual’s name and physical address; if the high-volume third-party seller is not an individual, either a copy of a government-issued photo

- A business tax identification number or, if the high-volume third party seller does not have a business tax identification number, a taxpayer identification number.

The bill provides that the online marketplace must verify the information the high-volume third-party seller provides under s. 559.953(2)(a), F.S., within 10 business days after receiving the information. If the high-volume third-party seller provides any changes to the information, the online marketplace must verify such changes within 10 business days after receiving the information.<sup>39</sup>

The bill requires the online marketplace to annually notify each high-volume third-party seller that they must inform the online marketplace of any changes to the information provided by the seller within 10 business days after receiving the notification.<sup>40</sup>

The bill establishes that an online marketplace must require a high-volume third-party seller to disclose to consumers in a conspicuous manner on the product listing, through a conspicuously placed link on the product listing, or in the order confirmation message or other document of communication made to the consumer after the purchase is finalized and in the consumer's account transaction history, all of the following information of any high-volume third party seller with an aggregate total of \$20,000 or more in annual gross revenues on its online platform:

- The full name of the high-volume third-party seller;
- The full physical address of the high-volume third-party seller;<sup>41</sup>
- Contact information for the high-volume third-party seller, including a working telephone number and working e-mail address to allow for direct, unhindered communication with the high-volume third-party seller;<sup>42</sup> and
- The identification of any seller that supplies the consumer product to the consumer upon purchase, if such seller is different than the high-volume third-party seller listed on the consumer product listing before the purchase.

The bill provides that if an online marketplace becomes aware that a high-volume third-party seller has made a false representation to the online marketplace in order to restrict access to the full physical address, telephone number, or e-mail address required, then the online marketplace, after providing the seller with written or electronic notice, must require the full disclosure of the high-volume third-party seller's full physical address, telephone number, and e-mail address. If such information is not disclosed within 10 business days after notification, the online

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identification for an individual acting on behalf of such seller which includes such individual's name and physical address or a copy of a government-issued record or tax document that includes the business name and physical address of the high-volume third-party seller.

<sup>39</sup> If a high-volume third-party seller provides a copy of a valid government-issued tax document, the information contained within such document must be presumed verified as of the date of issuance of the document.

<sup>40</sup> The online marketplace must include in the notification direction to each high-volume third-party seller to electronically certify either that the seller's information is unchanged or that the seller is providing changes to the information. The high-volume third-party seller's participation on the marketplace must be suspended until they have certified that their information is unchanged or has provided any changed information and the information has been verified.

<sup>41</sup> If the full physical address of the high-volume third-party seller is the primary residential address of such high-volume third-party seller, only the city, state, and country of the high-volume third-party seller is required to be disclosed.

<sup>42</sup> If the only telephone number of the high-volume third-party seller is the personal telephone number of the high-volume third-party seller, then only the working e-mail address is required to be disclosed or the online marketplace must provide other means of electronic messaging to contact the seller.

marketplace must suspend the selling privileges of the high-volume third-party seller on the online marketplace until the required information is disclosed.

The bill requires an online marketplace to conspicuously, on the product listing of any high-volume third-party seller, provide to consumers a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace and a message encouraging individuals seeking to purchase products to report suspicious activity to the online marketplace.

The bill provides that an online marketplace is not prevented from providing additional measures, electronic or otherwise, that it deems necessary to prevent the sale of fraudulent, stolen, or counterfeit consumer products on its platform.

The bill establishes that a violation of s. 559.953, F.S., constitutes a violation of the Deceptive and Unfair Trade Practices Act,<sup>43</sup> and the Department of Legal Affairs may adopt rules to collect and verify the required information.

The bill provides that the regulation under s. 559.953, F.S., is preempted to the Department of Legal Affairs.

The bill takes effect July 1, 2022.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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<sup>43</sup>See part II of ch. 501, F.S.

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

None.

**B. Private Sector Impact:**

Marketplace providers will be required to verify high volume third-party sellers, as well as require certain disclosures. This will potentially provide more safety within the online marketplace.

**C. Government Sector Impact:**

This bill will potentially lead to an increase in the investigations and enforcement actions undertaken by the Department of Legal Affairs relating to violations of the provisions of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill creates the following section of the Florida Statutes: 559.953.

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

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

None.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 42 - 202

and insert:

directly or through the online marketplace's payment processor,  
count towards the calculation for the number of discrete sales  
or transactions or the gross revenues.

(c) "Online marketplace" means any consumer-directed  
electronically based or accessed platform that:

1. Includes features that allow for, facilitate, or enable  
third-party sellers to engage in the sale, purchase, payment,



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storage, shipping, or delivery of a consumer product in the United States;

2. Is used by one or more third-party sellers for such purposes; and

3. Has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(d) "Seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace.

(e) "Third-party seller" means any seller, independent of an online marketplace, that sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace. The term does not include, with respect to an online marketplace:

1. A seller that operates the online marketplace;

2. A business entity that has made available to the general public the entity's name, business address, and working contact information;

3. A business entity with an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; or

4. A business entity that has provided to the online marketplace identifying information that has been verified.

(f) "Verify" means to confirm information and documentation provided to an online marketplace by the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided which correspond to



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the seller or an individual acting on the seller's behalf are valid, not misappropriated, and not falsified.

(2) VERIFICATION.—

(a) An online marketplace shall require that any high-volume third-party seller on the online marketplace provide the online marketplace with all of the following information within 10 days after qualifying as a high-volume third-party seller:

1. Deposit account information from a financial institution. If the high-volume third-party seller does not have deposit account information at a financial institution, such seller must provide the online marketplace with the name of the payee for payments issued by the online marketplace to the high-volume third-party seller, and the information must be confirmed by the online marketplace or by another third party contracted by the online marketplace.

2. Contact information, including all of the following:

a. A valid e-mail address and working phone number.

b. If the high-volume third-party seller is an individual, the individual's name.

c. If the high-volume third-party seller is not an individual, either a copy of a government-issued photo identification for an individual acting on behalf of such seller which includes such individual's name and physical address or a copy of a government-issued record or tax document that includes the business name and physical address of the high-volume third-party seller.

3. A business tax identification number or, if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number.





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(b) The online marketplace shall verify the information the high-volume third-party seller provides under this subsection within 10 days after receiving such information. If the high-volume third-party seller provides any changes to the information, the online marketplace must verify such changes within 10 days after receiving the information. If a high-volume third-party seller provides a copy of a valid government-issued tax document, the information contained within such tax document shall be presumed verified as of the date of issuance of such document.

(c) The online marketplace shall, on at least an annual basis, notify each high-volume third-party seller on the online marketplace that such seller must inform the online marketplace of any changes to the information previously provided by the seller within 10 days after receiving the notification. The notification must require the high-volume third-party seller to either electronically certify that the high-volume third-party seller's information is unchanged or provide changes to the information as necessary. If the online marketplace becomes aware that a high-volume third-party seller has not certified that such information is unchanged or provided such changed information within 10 days after receiving such notification, the online marketplace must suspend the selling privileges of the high-volume third-party seller until such seller provides such certification or changed information.

(3) DISCLOSURE.—

(a) An online marketplace shall disclose to consumers, in a clear and conspicuous manner in the order confirmation message or other document or communication made to the consumer after



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the purchase is finalized and in the consumer's account transaction history, all of the following information of any high-volume third-party seller with an aggregate total of \$20,000 or more in annual gross revenues on its online platform:

1. The full name of the high-volume third-party seller, which may include the seller's name or company name, or the name by which the seller or company operates on the online marketplace.

2. The full physical address of the high-volume third-party seller. If the seller certifies to the online marketplace that the seller does not have a business address and only has a residential street address, or has a combined business and residential address, the online marketplace may:

a. Disclose to consumers the country of the seller and, if applicable, the state in which the seller resides.

b. Inform consumers that a business address is not available for the seller and that consumer inquiries should be submitted to the seller by telephone, e-mail, or other means of electronic messaging provided to the seller by the online marketplace. If the seller certifies to the online marketplace that the seller is a business that has a physical address for product returns, the online marketplace may disclose the seller's physical address for product returns.

3. Contact information for the high-volume third-party seller, including a working telephone number or a working e-mail address or other means of direct electronic messaging, which may be provided to the seller by the online marketplace, to allow for direct, unhindered communication with the seller. If the only telephone number of the seller is the personal telephone



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number of the seller, the online marketplace must inform consumers that a telephone number is not available for the seller and that consumer inquiries should be submitted to the seller's e-mail address or other means of electronic messaging provided to the seller by the online marketplace.

4. Whether the high-volume third-party seller used a different seller to supply the consumer product to the consumer upon purchase. Upon the request of the consumer, the online marketplace shall disclose the identification of a seller, if the seller is different from the high-volume third-party seller listed on the consumer product listing before the purchase.

(b) If an online marketplace becomes aware that a high-volume third-party seller has made a false representation to the online marketplace in order to restrict access to the full physical address, telephone number, or e-mail address required in paragraph (a), the online marketplace must, after providing the seller with written or electronic notice, require the full disclosure of the high-volume third-party seller's full physical address, telephone number, and e-mail address. If such information is not disclosed within 10 days after notification, the online marketplace must suspend the selling privileges of the high-volume third-party seller on the online marketplace until the required information is disclosed.

(c) An online marketplace shall provide to consumers, in a conspicuous manner on the consumer product listing of any high-volume third-party seller, a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.

(d) This subsection does not prevent an online marketplace



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from using any additional measures, electronic or otherwise,  
that it deems necessary to prevent spam, fraud, or abuse in  
communication between the consumer and the high-volume third-  
party seller, or the sale of fraudulent, stolen, or counterfeit  
consumer products on its platform.

(4) ENFORCEMENT.—A violation of this section constitutes a  
violation of the Deceptive and Unfair Trade Practices Act under  
part II of chapter 501. A person who violates this section is  
subject to the penalties and remedies provided therein.  
Notwithstanding s. 501.211, this section does not create a  
private cause of action in favor of any person damaged by a  
violation of this section.

(5) RULES.—The Department of Legal Affairs may adopt rules  
with respect to collecting and verifying information under this  
section, provided that such rules are limited to what is  
necessary to collect and verify such information.

(6) PREEMPTION.—The regulation of the requirement for  
online marketplaces to verify information from high-volume  
third-party sellers on a one-time or ongoing basis or disclose  
information to consumers is preempted to the department. A local  
governmental entity may not establish, mandate, or otherwise  
require the verification or disclosure of such information.

Section 2. This act shall take effect January 1, 2023.

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

And the title is amended as follows:

Delete lines 18 - 19

and insert:

specified manner; requiring specified disclosures;



569968

186 providing for enforcement; providing construction;  
187 authorizing the Department



380838

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment to Amendment (569968)**

Delete lines 48 - 55.



543416

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment to Amendment (569968)**

Delete lines 133 - 138.



942640

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment to Amendment (569968) (with title amendment)**

Between lines 161 and 162  
insert:

(4) THIRD-PARTY SELLER INFORMATION.—An online marketplace must permanently delete or dispose of any third-party seller information collected by the online marketplace under this section within 24 months after receipt of the information. Except as required by this section, the information may not be shared, sold, or disseminated in any other way to any person or





942640

entity. However, the information may be disseminated to a law  
enforcement agency with a valid subpoena.

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

And the title is amended as follows:

Between lines 185 and 186

insert:

requiring online marketplaces to permanently delete or  
dispose of third-party seller information collected by  
the online marketplace within a specified timeframe;  
prohibiting online marketplaces from taking specified  
actions relating to such information; providing an  
exception;

By Senator Baxley

12-00821A-22

2022944\_\_

A bill to be entitled

An act relating to online marketplace transparency; creating s. 559.953, F.S.; defining terms; requiring online marketplaces to require high-volume third-party sellers using their service to provide certain information to the online marketplace within a specified timeframe; requiring the online marketplace to verify such information, or changes to such information, within a specified timeframe; providing that information on valid government-issued tax documents is presumed verified as of the issuance date; requiring an online marketplace to update and require certification of the updated information at least annually; requiring the online marketplace to suspend certain sellers who do not provide such a certification or updated information; requiring online marketplaces to disclose certain information in a specified manner; requiring disclosure of suppliers; providing for enforcement; authorizing the Department of Legal Affairs to adopt rules; preempting the regulation of the verification and disclosure of such information to the department; providing an effective date.

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

Section 1. Section 559.953, Florida Statutes, is created to read:  
559.953 Disclosure of information by online marketplaces.—

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

12-00821A-22

2022944\_\_

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

(a) "Consumer product" means a product that is used or bought for use primarily for personal, family, or household purposes.

(b) "High-volume third-party seller" means a participant in an online marketplace that is a third-party seller and that, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues. Only sales or transactions made through the online marketplace for which payment was processed by the online marketplace, either directly or through the seller's payment processor, count towards the calculation for the number of discrete sales or transactions or the gross revenues.

(c) "Online marketplace" means any consumer-directed electronically based or accessed platform that:

1. Includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States;

2. Is used by one or more third-party sellers for such purposes; and

3. Has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(d) "Seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace.

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

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(e) "Third-party seller" means any seller, independent of an operator, a facilitator, or an owner of an online marketplace, that sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace. The term does not include, with respect to an online marketplace:

1. A seller that operates the online marketplace;
2. A business entity that has made available to the general public the entity's name, business address, and working contact information;
3. A business entity with an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; or
4. A business entity that has provided to the online marketplace identifying information that has been verified.

(f) "Verify" means to confirm information and documentation provided to an online marketplace by the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided which correspond to the seller or an individual acting on the seller's behalf are valid, not misappropriated, and not falsified.

(2) VERIFICATION.—

(a) An online marketplace shall require that any high-volume third-party seller on the online marketplace provide the online marketplace with all of the following information within 10 business days after qualifying as a high-volume third-party seller:

1. Deposit account information from a financial

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institution. If the high-volume third-party seller does not have deposit account information at a financial institution, such seller must provide the online marketplace with the name of the payee for payments issued by the online marketplace to the high-volume third-party seller, and the information must be confirmed by the online marketplace or by another third party contracted by the online marketplace.

2. Contact information, including all of the following:

- a. A valid e-mail address and working phone number.
- b. If the high-volume third-party seller is an individual, a copy of a valid government-issued photo identification for the individual which includes the individual's name and physical address.
- c. If the high-volume third-party seller is not an individual, either a copy of a government-issued photo identification for an individual acting on behalf of such seller which includes such individual's name and physical address or a copy of a government-issued record or tax document that includes the business name and physical address of the high-volume third-party seller.

3. A business tax identification number or, if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number.

(b) The online marketplace shall verify the information the high-volume third-party seller provides under this subsection within 10 business days after receiving such information. If the high-volume third-party seller provides any changes to the information, the online marketplace must verify such changes within 10 business days after receiving the information. If a

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high-volume third-party seller provides a copy of a valid government-issued tax document, the information contained within such tax document shall be presumed verified as of the date of issuance of such document.

(c) The online marketplace shall, on at least an annual basis, notify each high-volume third-party seller on the online marketplace that such seller must inform the online marketplace of any changes to the information previously provided by the seller within 10 business days after receiving the notification. The notification must require the high-volume third-party seller to either electronically certify that the high-volume third-party seller's information is unchanged or provide changes to the information as necessary. If the online marketplace becomes aware that a high-volume third-party seller has not certified that such information is unchanged or provided such changed information within 10 business days after receiving such notification, the online marketplace must suspend the selling privileges of the high-volume third-party seller until such seller provides such certification or changed information.

(3) DISCLOSURE.—

(a) An online marketplace shall disclose to consumers in a conspicuous manner on the product listing, through a conspicuously placed link on the product listing, or in the order confirmation message or other document or communication made to the consumer after the purchase is finalized and in the consumer's account transaction history, all of the following information of any high-volume third party seller with an aggregate total of \$20,000 or more in annual gross revenues on its online platform:

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1. The full name of the high-volume third-party seller.
  2. The full physical address of the high-volume third-party seller. If the full physical address of the high-volume third-party seller is the primary residential address of such high-volume third-party seller, only the city, state, and country of the high-volume third-party seller is required to be disclosed.
  3. Contact information for the high-volume third-party seller, including a working telephone number and working e-mail address to allow for direct, unhindered communication with the high-volume third-party seller. If the only telephone number of the high-volume third-party seller is the personal telephone number of the high-volume third-party seller, then only the working e-mail address is required to be disclosed or the online marketplace must provide other means of electronic messaging to contact such seller.
  4. The identification of any seller that supplies the consumer product to the consumer upon purchase, if such seller is different than the high-volume third-party seller listed on the consumer product listing before the purchase.
- (b) If an online marketplace becomes aware that a high-volume third-party seller has made a false representation to the online marketplace in order to restrict access to the full physical address, telephone number, or e-mail address required in paragraph (a), the online marketplace must, after providing the seller with written or electronic notice, require the full disclosure of the high-volume third-party seller's full physical address, telephone number, and e-mail address. If such information is not disclosed within 10 business days after notification, the online marketplace must suspend the selling

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175 privileges of the high-volume third-party seller on the online  
176 marketplace until the required information is disclosed.

177 (c) An online marketplace shall provide to consumers, in a  
178 conspicuous manner on the consumer product listing of any high-  
179 volume third-party seller, a reporting mechanism that allows for  
180 electronic and telephonic reporting of suspicious marketplace  
181 activity to the online marketplace and a message encouraging  
182 individuals seeking goods for purchase to report suspicious  
183 activity to the online marketplace.

184 (d) This subsection does not prevent an online marketplace  
185 from providing any additional measures, electronic or otherwise,  
186 that it deems necessary to prevent the sale of fraudulent,  
187 stolen, or counterfeit consumer products on its platform.

188 (4) ENFORCEMENT.—A violation of this section constitutes a  
189 violation of the Deceptive and Unfair Trade Practices Act under  
190 part II of chapter 501. A person who violates this section is  
191 subject to the penalties and remedies provided therein.

192 (5) RULES.—The Department of Legal Affairs may adopt rules  
193 with respect to collecting and verifying information under this  
194 section, provided that such rules are limited to what is  
195 necessary to collect and verify such information.

196 (6) PREEMPTION.—The regulation of the requirement for  
197 online marketplaces to verify information from high-volume  
198 third-party sellers on a one-time or ongoing basis or disclose  
199 information to consumers is preempted to the department. A local  
200 governmental entity may not establish, mandate, or otherwise  
201 require the verification or disclosure of such information.

202 Section 2. This act shall take effect July 1, 2022.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1000

INTRODUCER: Rules Committee; Environment and Natural Resources Committee and Senator Albritton

SUBJECT: Nutrient Application Rates

DATE: February 10, 2022

REVISED: \_\_\_\_\_

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|------------|----------------|-----------|------------------|
| 1. Collazo | Rogers         | EN        | <b>Fav/CS</b>    |
| 2. Becker  | Becker         | AG        | <b>Favorable</b> |
| 3. Collazo | Phelps         | RC        | <b>Fav/CS</b>    |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1000 authorizes citrus producers to use written recommendations from certified professionals to tailor their recommended nutrient application rates. The certified professional's determination that published nutrient application rates are not appropriate, and any recommendations for site-specific nutrient management, must be documented and kept for 5 years.

The bill provides that citrus producers using site-specific nutrient management are required to enroll in and implement certain applicable best management practices (BMPs) adopted by the Department of Agriculture and Consumer Services (DACS). It also requires the University of Florida Institute of Food and Agricultural Sciences to analyze the use of site-specific nutrient management for crops other than citrus and crop rotations, develop a research plan and interim recommendations for implementation of site-specific nutrient management, and submit a report to the Governor and Legislature by December 31, 2022.

Citrus producers implementing site-specific nutrient management in compliance with the bill are:

- Provided a presumption of compliance with state water quality standards;
- May rely upon the waiver of liability provision in existing law; and
- Are deemed in compliance with the BMPs for pollution reduction, waiver of liability, and presumption of compliance provisions in existing law.

The bill contains definitions for the terms “certified professional” and “site-specific nutrient management” and associated legislative findings and intent provisions.

The bill provides that the subsection that describes the use of “site-specific nutrient management” expires December 31, 2027. The bill also extends the expiration dates of the “findings and intent,” “fees,” “use of funds,” “waiver of liability,” and “rulemaking” provisions of s. 576.045, F.S., from December 31, 2022 to December 31, 2032, and the “compliance” and “other provisions” subsections of s. 576.045, F.S., from December 31, 2027 to December 31, 2037.

## II. Present Situation:

### Agricultural Best Management Practices

Agricultural best management practices (BMPs) are practical measures that agricultural producers can take to reduce the amount of fertilizers, pesticides, animal waste, and other pollutants entering the state’s water resources.<sup>1</sup> BMPs are designed to improve water quality while maintaining agricultural production.<sup>2</sup> Categories of BMPs include:<sup>3</sup>

- Nutrient management to determine nutrient needs and sources and manage nutrient applications (including manure) to minimize impacts to water resources.
- Irrigation management to address the method and scheduling of irrigation to reduce water and nutrient losses to the environment.
- Water resource protection using buffers, setbacks and swales to reduce or prevent the transport of sediments and nutrients from production areas to waterbodies.<sup>4</sup>

The Department of Agriculture and Consumer Services (DACS) develops and adopts BMPs by rule for different types of agricultural commodities.<sup>5</sup> Existing law provides for agricultural producers to reduce their impacts to water quality through the implementation of applicable BMPs adopted by DACS.<sup>6</sup>

The Department of Environmental Protection (DEP) develops total maximum daily loads (TMDLs) for waterbodies that have been found to be impaired.<sup>7</sup> The TMDL is a determination of

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<sup>1</sup> University of Florida, Institute of Food and Agricultural Sciences (UF/IFAS), *Agricultural Best Management Practices – About BMPs*, <https://bmp.ifas.ufl.edu/about-bmps/> (last visited Dec. 21, 2021); see also s. 576.011(2), F.S. (defining best management practices as practices or combinations of practices determined by research or field testing in representative sites to be the most effective and practicable methods of fertilization designed to meet nitrate groundwater quality standards, including economic and technological considerations).

<sup>2</sup> *Id.*

<sup>3</sup> UF/IFAS, *Agricultural Best Management Practices – About BMPs*, <https://bmp.ifas.ufl.edu/about-bmps/> (last visited Dec. 21, 2021); Florida Department of Agriculture and Consumer Services (DACS), *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Dec. 21, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> DACS, *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Dec. 21, 2021); see also Fla. Admin. Code Rules 5M-16 (citrus), 5M-11 (cow/calf), 5M-17 (dairy), 5M-14 (equine), 5M-6 (nurseries), 5M-19 (poultry), 5M-9 (sod), 5M-13 (specialty fruit and nut crops), 5M-8 (vegetable and agronomic crops), and 5M-18 (wildlife/state imperiled species).

<sup>6</sup> *Id.*; see also s. 576.045, F.S.

<sup>7</sup> DACS, *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Dec. 21, 2021).

the maximum amount of a pollutant (such as a nutrient) that a waterbody can receive and still meet the water quality standards that protect human health and aquatic life.<sup>8</sup>

To implement a TMDL, DEP establishes basin management action plans (BMAPs), which identify all known contributors of the pollutant within a BMAP and assign load reductions for the pollutant.<sup>9</sup> A BMAP also identifies strategies to address the pollutant reductions required to achieve the TMDL.<sup>10</sup>

“Nonpoint source” contributors (sources where one cannot point at an actual discharge point), like agriculture, are responsible for implementing rule-adopted BMPs to help achieve water quality standards within BMAPs.<sup>11</sup> Therefore, any agricultural producers within a BMAP area must either enroll in DACS’ BMP program and properly implement applicable BMPs, or conduct water quality monitoring prescribed by DEP or the water management district to show that they are meeting state water quality standards; however, this type of water quality monitoring can be very expensive.<sup>12</sup>

According to the annual report on BMPs prepared by DACS, approximately 62 percent of agricultural acreage is enrolled in DACS’ BMP program statewide.<sup>13</sup> To enroll in the BMP program, agriculture producers must meet with the Office of Agricultural Water Policy (OAWP) and submit a notice of intent to implement the BMPs.<sup>14</sup> These producers are subject to inspection and recordkeeping requirements.<sup>15</sup> After verification by DEP, producers implementing BMPs receive a presumption of compliance with state water quality standards for the pollutants addressed by the BMPs<sup>16</sup> and those who enroll in the BMP program become eligible for technical assistance and cost-share funding for BMP implementation. Within a BMAP, management strategies, including BMPs and water quality monitoring, are enforceable.<sup>17</sup>

The University of Florida’s Institute of Food and Agricultural Sciences (UF/IFAS) is heavily involved in the adoption and implementation of BMPs. UF/IFAS provides expertise to both DACS and agriculture producers, and has extension offices throughout Florida. UF/IFAS holds summits and workshops on BMPs,<sup>18</sup> conducts research to issue recommendations for improving

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> UF/IFAS, *Agricultural Best Management Practices – About BMPs*, <https://bmp.ifas.ufl.edu/about-bmps/> (last visited Dec. 21, 2021).

<sup>13</sup> DACS Office of Agricultural Water Policy (OAWP), *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 2 (July 1, 2021), available at <https://www.fdacs.gov/ezs3download/download/98382/2665697/Media/Files/Agricultural-Water-Policy-Files/BMP-Implementation/2021-status-of-bmp-implementation-report.pdf> (last visited Jan. 4, 2022).

<sup>14</sup> Section 403.067(7)(c)2., F.S.; see Fla. Admin. Code R. 5M-8.002, 5M-8.004, 5M-8.006.

<sup>15</sup> Section 403.067(7)(c)2., F.S.; see Fla. Admin. Code R. 5M-8.006.

<sup>16</sup> Section 403.067(7)(c)3., F.S.

<sup>17</sup> Section 403.067(7)(d), F.S.

<sup>18</sup> UF/IFAS, *Agricultural Best Management Practices – Home*, <https://bmp.ifas.ufl.edu/> (last visited Jan. 5, 2022).



BMPs,<sup>19</sup> and issues training certificates for BMPs that require licenses such as Green Industry BMPs.<sup>20</sup>

DACS is required to perform onsite inspection of agricultural producers enrolled in BMPs, at least every 2 years, to ensure that the BMPs are being properly implemented.<sup>21</sup> DACS is also required to collect and retain nutrient application records<sup>22</sup> and to provide these records to DEP.<sup>23</sup> DACS recently began updating its BMP rules; in 2021, it completed rulemaking to standardize record retention and recordkeeping processes across the various BMP manuals.<sup>24</sup>

## Nutrient Management

Since the BMP program was implemented in 1999,<sup>25</sup> DACS has adopted and incorporated by reference ten BMP manuals that cover nearly all major agricultural commodities in Florida:

- Citrus<sup>26</sup>
- Cow/Calf<sup>27</sup>
- Dairy<sup>28</sup>
- Equine<sup>29</sup>
- Nurseries<sup>30</sup>
- Poultry<sup>31</sup>
- Sod<sup>32</sup>

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<sup>19</sup> UF/IFAS Everglades Research & Education Center, *Best Management Practices & Water Resources*, <https://erec.ifas.ufl.edu/research-programs/best-management-practices-and-water-management/> (last visited Jan. 5, 2022).

<sup>20</sup> UF/IFAS Florida-Friendly Landscaping Program, *Green Industries Best Management Practices*, <https://ffl.ifas.ufl.edu/ffl-and-you/gi-bmp-program/> (last visited Jan. 5, 2022).

<sup>21</sup> Section 403.067(7)(d)3., F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 403.067(7)(c)5., F.S.

<sup>24</sup> See Fla. Admin. Code R. 5M-1.001, 5M-1.008, and 5M-1.009 (amended September 12, 2021).

<sup>25</sup> The program was voluntary from 1999-2005. In 2005 the Florida Legislature modified the law requiring agricultural producers to adopt BMPs or conduct water quality monitoring.

<sup>26</sup> Fla. Admin. Code R. 5M-16.001; DACS, *Water Quality/Quantity Best Management Practices for Citrus (2012 Edition)*, DACS-P-01756, available at [https://www.fdacs.gov/ezs3download/download/25410/516289/Bmp\\_FloridaCitrus2012.pdf](https://www.fdacs.gov/ezs3download/download/25410/516289/Bmp_FloridaCitrus2012.pdf) (last visited Jan. 4, 2022).

<sup>27</sup> Fla. Admin. Code R. 5M-11.002; DACS, *Water Quality Best Management Practices for Florida Cow/Calf Operations (2008 Edition)*, DACS P-01280, available at [https://www.fdacs.gov/ezs3download/download/25408/516287/Bmp\\_FloridaCowCalf2008.pdf](https://www.fdacs.gov/ezs3download/download/25408/516287/Bmp_FloridaCowCalf2008.pdf) (last visited Jan. 4, 2022).

<sup>28</sup> Fla. Admin. Code R. 5M-17.001; DACS, *Water Quality/Quantity Best Management Practices for Florida Dairy Operations (2015 Edition)*, FDACS-P-02008, available at <https://www.fdacs.gov/ezs3download/download/64582/1525731/Media/Files/Agricultural-Water-Policy-Files/Best-Management-Practices/dairyBMPFinal.pdf> (last visited Jan. 4, 2022).

<sup>29</sup> Fla. Admin. Code R. 5M-14.002; DACS, *Water Quality/Quantity Best Management Practices for Florida Equine Operations (2011 Edition)*, DACS P-01531, available at <https://www.fdacs.gov/content/download/30687/file/equineBMP-lores.pdf> (last visited Jan. 4, 2022).

<sup>30</sup> Fla. Admin. Code R. 5M-6.002; DACS, *Water Quality/Quantity Best Management Practices for Florida Nurseries (2014 Edition)*, DACS-P-01267, available at <https://www.fdacs.gov/content/download/37570/file/nurseryBMP-lores.pdf> (last visited Jan. 4, 2022).

<sup>31</sup> Fla. Admin. Code R. 5M-19.001; DACS, *Water Quality/Quantity Best Management Practices for Florida Poultry Operations (2016 Edition)*, FDACS-P-02052, available at <https://www.fdacs.gov/content/download/71304/file/Poultry%20BMP%20Manual.pdf> (last visited Jan. 4, 2022).

<sup>32</sup> Fla. Admin. Code R. 5M-9.002; DACS, *Water Quality/Quantity Best Management Practices for Florida Sod (2008 Edition)*, DACS-P 01330, available at [https://www.fdacs.gov/ezs3download/download/25407/516286/Bmp\\_FloridaSod2008.pdf](https://www.fdacs.gov/ezs3download/download/25407/516286/Bmp_FloridaSod2008.pdf) (last visited Jan. 4, 2022).

- Specialty Fruit and Nut Crops<sup>33</sup>
- Vegetable and Agronomic Crops<sup>34</sup>
- Wildlife (State Imperiled Species)<sup>35</sup>

With only one exception (Wildlife/State Imperiled Species), all of these BMP manuals address nutrient management in ways specific to each commodity. For example, the BMP manual for citrus entitled *Water Quality/Quantity Best Management Practices for Citrus* (Citrus BMPs Manual) contains BMPs on nutrient management, which it defines as the control of the source, rate, placement, and timing of nutrient applications and soil amendments to ensure sufficient soil fertility for citrus tree production and to minimize impacts to water quality.<sup>36</sup>

Excess nitrogen and phosphorus are the most common causes of water quality impairments in the state because they enter surface waters through stormwater or irrigation runoff or leach through soils into groundwater.<sup>37</sup> Accordingly, the Citrus BMPs Manual includes recommended nutrient application rates for nitrogen and phosphorus.<sup>38</sup> The recommended rates are based on normal, healthy tree development for their age; however, where disease, salinity, or other factors inhibit normal tree development, fertilizer application(s) should be adjusted accordingly.<sup>39</sup>

### Statutory Incentives for BMP Implementation

Section 576.045, F.S., is focused on improving fertilization-management practices as soon as practicable in a way that protects the state's water resources and preserves a viable agricultural industry.<sup>40</sup> Goals include supporting BMP-related research<sup>41</sup> and incentivizing BMP implementation by the agricultural industry and other major users of fertilizer.<sup>42</sup> In addition to authorizing the imposition and collection of fees in support of various activities connected to

<sup>33</sup> Fla. Admin. Code R. 5M-13.002; DACS, *Water Quality/Quantity Best Management Practices for Florida Specialty Fruit and Nut Crops (2011 Edition)*, DACS P-01589, available at [https://www.fdacs.gov/ezs3download/download/25409/516288/Bmp\\_FloridaSpecialtyFruitNut2011.pdf](https://www.fdacs.gov/ezs3download/download/25409/516288/Bmp_FloridaSpecialtyFruitNut2011.pdf) (last visited Jan. 4, 2022).

<sup>34</sup> Fla. Admin. Code R. 5M-8.002(1); DACS, *Water Quality/Quantity Best Management Practices for Florida Vegetable and Agronomic Crops (2015 Edition)*, FDACS-P-01268, available at <https://www.fdacs.gov/content/download/77230/file/vegAgCropBMP-loRes.pdf> (last visited Jan. 4, 2022).

<sup>35</sup> Fla. Admin. Code R. 5M-18.001; DACS, *Florida Agriculture Wildlife Best Management Practices for State Imperiled Species (2015 Edition)*, DACS-P-02031, available at [https://www.fdacs.gov/content/download/61100/file/WildlifeBMP\\_final.pdf](https://www.fdacs.gov/content/download/61100/file/WildlifeBMP_final.pdf) (last visited Jan. 4, 2022).

<sup>36</sup> DACS, *Water Quality/Quantity Best Management Practices for Citrus (2012)*, DACS-P-01756, at 13-17, available at [https://www.fdacs.gov/ezs3download/download/25410/516289/Bmp\\_FloridaCitrus2012.pdf](https://www.fdacs.gov/ezs3download/download/25410/516289/Bmp_FloridaCitrus2012.pdf) (last visited Dec. 21, 2021).

<sup>37</sup> *Id.* at 4.

<sup>38</sup> *Id.* at 16-17 (providing that the phosphorus fertilization rate should be based upon soil and/or leaf tissue tests, and the nitrogen fertilization rate should be based upon recommended rates published by the Institute of Food and Agricultural Sciences at the University of Florida (UF/IFAS)).

<sup>39</sup> *Id.* at 16.

<sup>40</sup> Section 576.045(1)(b), F.S.

<sup>41</sup> A list of BMP research funding priorities and research projects by topic is available online. See DACS, BMP Research, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices/BMP-Research> (last visited Dec. 12, 2021).

<sup>42</sup> See s. 576.045(1)(b), F.S.; see also ss. 576.045(4)-(5) and 403.076(7)(c)3., F.S. (incentivizing BMP implementation via waiver of liability and presumption of compliance provisions).

achieving state water quality standards for nitrogen and phosphorus criteria,<sup>43</sup> the statute incentivizes BMP implementation in two ways: a waiver of liability provision<sup>44</sup> and a presumption of compliance provision.<sup>45</sup>

The waiver of liability provision prohibits DEP from instituting proceedings against any person or the Federal Government under existing law<sup>46</sup> to recover any costs or damages associated with nitrogen or phosphorus contamination of groundwater or surface water (or the evaluation, assessment, or remediation of contamination), due to the application of fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus.<sup>47</sup> To qualify for the waiver of liability, a property owner or leaseholder must:

- Provide DACS with a notice of intent to implement applicable interim measures, BMPs, or other measures adopted by DACS, which practices or measures have been verified by DEP to be effective, and implement them as soon as practicable according to rules adopted by DACS, or no longer apply fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus;<sup>48</sup> or
- No longer apply fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus.<sup>49</sup>

The presumption of compliance provision states that if a property owner or leaseholder implements interim measures, BMPs, or other measures adopted by DACS, which practices or measures have been verified by DEP to be effective, and complies with the following requirements, there is a presumption of compliance with state water quality standards. The presumption applies for the application of fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus. To achieve the presumption, the property owner or leaseholder must:<sup>50</sup>

- Provide DACS with a notice of intent to implement applicable interim measures, BMPs, or other measures adopted by DACS, and implements them as soon as practicable according to rules adopted by DACS, or no longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus;<sup>51</sup> or
- No longer apply fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus.<sup>52</sup>

The “findings and intent,” “fees,” “purpose,” “waiver of liability,” and “rulemaking” provisions of s. 576.045, F.S., are scheduled to expire on December 31, 2022, whereas the “compliance”

<sup>43</sup> Section 576.045(2)-(3), F.S. DACS collects \$100 from each licensee to distribute fertilizer; \$100 for each specialty fertilizer registration; and fifty cents per ton for all fertilizer that contains nitrogen or phosphorus and that is sold in the state. *Id.*

<sup>44</sup> Section 576.045(4), F.S.; *see also* s. 403.076(7)(c)3., F.S. (also incentivizing BMP implementation via a waiver of liability provision).

<sup>45</sup> Section 576.045(5), F.S.; *see also* s. 403.076(7)(c)3., F.S. (also incentivizing BMP implementation via a presumption of compliance provision).

<sup>46</sup> *See* s. 376.307(5), F.S.

<sup>47</sup> Section 576.045(4), F.S.

<sup>48</sup> Section 576.045(4)(a)1.-2., F.S.

<sup>49</sup> Section 576.045(4)(b), F.S.

<sup>50</sup> Section 576.045(5), F.S.

<sup>51</sup> Section 576.045(5)(a)1.-2., F.S.

<sup>52</sup> Section 576.045(5)(b), F.S.

and “other provisions” subsections of s. 576.045, F.S., are scheduled to expire on December 31, 2027.<sup>53</sup> These expiration dates have been included in the statute since it was first enacted and have been periodically extended, most recently in 2012.<sup>54</sup>

### **American Society of Agronomy**

The American Society of Agronomy (ASA) is the professional home for scientists dedicated to advancing the discipline of the agronomic sciences.<sup>55</sup> Agronomy employs the disciplines of soil and plant sciences to crop production, with the wise use of natural resources and conservation practices to produce food, feed, fuel, fiber, and pharmaceutical crops for the world’s growing population.<sup>56</sup> A common thread across the programs and services of the ASA is the dissemination and transfer of scientific knowledge to advance the profession.<sup>57</sup>

The ASA offers certification programs to become a Certified Crop Adviser (CCA) or a Certified Professional Soil Scientist (CPSS).<sup>58</sup> Certification as a CCA is appropriate for any adviser/consultant that spends the majority of his or her time advising growers or farm managers/operators on agronomic practices and can meet the standards of the program.<sup>59</sup> Certification as a CPSS is appropriate for any individual whose education, experience, and career path is in some aspect of the soil science profession and can meet the standards of the program.<sup>60</sup>

The ASA also offers a specialty certification in 4R Nutrient Management Planning.<sup>61</sup> The four “Rs” refer to building a nutrient management plan that puts the (1) right nutrient resources, at the (2) right rate, in the (3) right place, and at the (4) right time. The specialty is focused on addressing environmental and resource management concerns in order to improve water quality and environmental stewardship. It also considers the integration of agronomic practices with economic analysis and environmental interaction. Proficiency areas tested include nutrient management planning; nitrogen, phosphorus, and potassium; secondary macronutrients and micronutrients; and manure management.<sup>62</sup>

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<sup>53</sup> Section 576.045(8), F.S.

<sup>54</sup> Ch. 94-311, s. 8, Laws of Fla. (creating s. 576.045, F.S.); *see also* ch. 2003-147, s. 1, Laws of Fla. (extending the expiration dates); *see also* ch. 2012-190, s. 26, Laws of Fla. (further extending the expiration dates).

<sup>55</sup> American Society of Agronomy (ASA), *Membership*, <https://www.agronomy.org/membership> (last visited Jan. 5, 2022).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> ASA, *Certifications*, <https://www.agronomy.org/certifications> (last visited Jan. 5, 2022).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> ASA, *New Nutrient Management Certification Offered*, <https://www.agronomy.org/news/media-releases/releases/2015/0518/671> (last visited Jan. 11, 2022).

<sup>62</sup> *Id.*

## Citrus Diseases

The Department of Citrus has reported that citrus production in Florida could drop by as much as 82 percent by 2026, due in large part to citrus diseases.<sup>63</sup> These diseases pose significant threats to the Florida citrus industry. They include all of the following:<sup>64</sup>

- Alternaria brown spot
- Black spot
- Blight
- Canker
- Exotic citrus diseases
- Greasy spot
- Citrus greening (HLB)
- Melanose
- Phytophthora
- Postbloom fruit drop
- Postharvest diseases
- Scab
- Tristeza
- Virus-like diseases<sup>65</sup>

Citrus greening, also known as Huanglongbing (HLB), is among the most serious citrus diseases in the world.<sup>66</sup> It is widespread in Asia, Africa and the Saudi Arabian peninsula. In August 2005, it was found for the first time in the U.S. in south Miami-Dade County.<sup>67</sup> Every citrus grove in Florida is now being adversely impacted by HLB.<sup>68</sup>

HLB is a bacterial disease that attacks the vascular system of plants.<sup>69</sup> Once infected, there is no cure for the disease, and in areas where the disease is endemic, citrus trees decline and die within a few years. There are three known forms: Asian, African and Brazilian. The HLB bacteria is transmitted primarily by insect vectors (citrus psyllids), but can also be spread through plant grafting and movement of infected plant material.<sup>70</sup>

Another serious threat is citrus canker.<sup>71</sup> Citrus canker is a bacterial disease that causes lesions on leaves, stems and fruit. It is not harmful to humans, but it causes premature leaf and fruit drop

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<sup>63</sup> Florida Farm Bureau, *Hope for Florida's Declining Citrus Industry*, <https://www.floridafarmbureau.org/hope-for-floridas-declining-citrus-industry/> (last visited Jan. 6, 2022).

<sup>64</sup> UF/IFAS Citrus Research and Education Center, *Disease Identification*, <https://crec.ifas.ufl.edu/citrus-production/disease-identification/> (last visited Jan. 5, 2022).

<sup>65</sup> *Id.*

<sup>66</sup> DACS, *Huanglongbing (HLB)/Citrus Greening Disease Information*, <https://www.fdacs.gov/Agriculture-Industry/Pests-and-Diseases/Plant-Pests-and-Diseases/Citrus-Health-Response-Program/Citrus-Pests-and-Diseases/HLB-Citrus-Greening> (last visited Jan. 5, 2022).

<sup>67</sup> *Id.*

<sup>68</sup> Dep't of Citrus (DOC), *Orange Production*, <https://www.floridacitrus.org/newsroom/citrus-411/orange-production/> (last visited Jan. 6, 2021).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> DACS, *Citrus Canker FAQ*, <https://www.fdacs.gov/Agriculture-Industry/Pests-and-Diseases/Plant-Pests-and-Diseases/Citrus-Health-Response-Program/Citrus-Pests-and-Diseases/Citrus-Canker-FAQ> (last visited Jan. 5, 2022).

and will eventually render trees unproductive. Fruit infected with canker is safe to eat, but it is too unsightly to be sold.<sup>72</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 576.011, F.S., to include definitions for the terms “certified professional” and “site-specific nutrient management:”

- A “certified professional” is defined to mean an individual who holds a certified crop adviser designation issued by the American Society of Agronomy, who has passed the society’s Southeast Region Certified Crop Adviser Exam, who holds a 4R Nutrient Management Specialty certification, and whose credentials have been verified by the society’s Florida Certified Crop Adviser Board.
- “Site-specific nutrient management” is defined to mean the application of nutrients in accordance with the site-specific nutrient management provisions created in Section 2 of the bill.

**Section 2** amends s. 576.045, F.S., to include the following Legislative findings:

- Nutrient application rate recommendations are presently under review by the University of Florida Institute of Food and Agricultural Sciences (UF/IFAS) so that they can reflect the latest methods of producing agricultural commodities and changes to nutrient application practices which are appropriate due to disease, new crop varieties, changes in U.S. Department of Agriculture Agricultural Marketing Service standards, growing techniques, and market conditions.
- To gain efficiency and be able to compete successfully with foreign producers that benefit from lower costs of production and favorable trade conditions, many producers in this state grow more product per acre, resulting in higher production at lower overall costs. This high-efficiency crop production requires nutrient application to be based on the intensity of production on a per-acre basis, rather than the lower per-acre production on which past research based its recommended nutrient application rate.
- Florida citrus faces challenges that include citrus greening, citrus canker, windstorms, a freeze in 2022 that resulted in the smallest citrus harvest since 1946, labor and supply chain shortages in 2022, and other events that result in the fruit not being harvested. In order to continue production of this state’s iconic crop, nutrient application rates must reflect fruit grown on the tree after the bloom during the growing season and not fruit ultimately harvested for market delivery.

The bill provides that the Legislature intends to:

- Accommodate continued agricultural production without interruption as research to formally revise nutrient application rates is completed.
- Authorize the use of site-specific nutrient management for Florida citrus to adjust recommended nutrient application rates when site-specific nutrient management is supported by written recommendations from a certified professional and documented using production and field data that is retained for review during the best management practices (BMPs) implementation verification process.

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<sup>72</sup> *Id.*

The bill provides that funds collected pursuant to the fees provision in the statute may be used in the research, development, demonstration, and implementation of site-specific nutrient management. The funds may also be used to complete the analysis, research plan and recommendations, and report required under the bill.

The bill authorizes the use of site-specific nutrient management to tailor recommended nutrient application rates for citrus crops, where site-specific nutrient management is supported by a certified professional, and where the following conditions are met:

- When recommended nutrient application rates published by UF/IFAS or other state universities and Florida College System institutions that have agricultural research programs are not appropriate for a specific producer due to soil conditions, disease, crop varieties, subsequent crop rotations, planting density, market requirements, or site-specific conditions, written recommendations from a certified professional may be used to tailor the recommended nutrient application rates for that producer. The determination that the published nutrient application rates are not appropriate and the recommendation for the tailoring of nutrient application rates must be documented with one or more of the following records, as appropriate:
  - soil tests,
  - plant tissue tests,
  - pathology reports,
  - yield response curves,
  - growth records, or
  - site-specific conditions.
- The producer must document records specifying the application rate, the types or forms of nutrients used, the nutrient sources used, and the placement and timing of the nutrient sources.
- The producer must retain the records for 5 years to support the use of site-specific nutrient management.
- Citrus producers using site-specific nutrient management must be enrolled in and implementing all other BMPs adopted by the Department of Agriculture and Consumer Services (DACS) and identified in the enrolled notice of intent required under the waiver of liability and presumption of compliance provisions of the section or the best management practices paragraph in s. 403.067(7), F.S.
- Notwithstanding any other law, citrus producers implementing site-specific nutrient management in compliance with the bill are provided a presumption of compliance with state water quality standards, may rely on the waiver of liability provision in the section, and are deemed to be in compliance with the BMPs for pollution reduction in existing law as well as the waiver of liability and presumption of compliance provisions of the section.

The bill requires UF/IFAS to analyze the use of site-specific nutrient management for crops other than citrus and crop rotations, develop a research plan and interim recommendations for implementation of site-specific nutrient management, and submit a require to the Governor and Legislature by December 31, 2022.

The bill clarifies that property owners and leaseholders who implement interim measures, BMPs, or other measures that have been adopted by DACS and verified by the Department of

Environmental Protection (DEP) as effective, are presumed to have complied with s. 576.045, F.S., and the BMPs for pollution reduction in existing law.

The bill amends s. 576.045(9), F.S., to provide that:

- The “site-specific nutrient management” provision expires December 31, 2027;
- The “findings and intent,” “fees,” “use of funds,” “waiver of liability,” and “rulemaking” provisions expire on December 31, 2032; and
- The “compliance” and “other provisions” subsections expire on December 31, 2037.

**Section 3** of the bill amends s. 403.067(7)(c)3., F.S., to provide that implementation of BMPs that have been authorized by s. 576.045, F.S., also qualify for the presumption of compliance and waiver of liability provisions in that subparagraph. It also amends the subparagraph to conform it to the bill.

**Section 4** of the bill provides an effective date of July 1, 2022.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

The bill extends the expiration date currently applicable to the existing “fees” provision in the statute from December 31, 2022 to December 31, 2032. Art. VII, s. 19 of the Florida Constitution requires supermajority votes on a separate bill by the Legislature to either impose new or raise existing state taxes or fees. This bill extends an existing fee at its current rates.

**E. Other Constitutional Issues:**

None.

#### **V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The bill extends the expiration date of the “fees” provision in the statute from December 31, 2022 to December 31, 2032.



**B. Private Sector Impact:**

Because the bill extends the expiration date currently applicable to the existing “fees” provision in the statute from December 31, 2022 to December 31, 2032, the private sector will continue to be subject to them.

**C. Government Sector Impact:**

Because the bill extends the expiration date currently applicable to the existing “fees” provision in the statute from December 31, 2022 to December 31, 2032, the government sector will continue to collect them. These fees are collected and paid by licensees to protect the state’s water resources, by funding research concerning best management practices, education, and incentives for the agricultural industry and other major users of fertilizers.<sup>73</sup>

**VI. Technical Deficiencies:**

Subsection (4) in Section 2 of the bill sunsets in 2027. However, section (3)(b) refers to subsection (4), but will sunset later than subsection (4). At that time, the reference will not have a valid subsection to refer to. Subsection (3)(b) should sunset at the same time as subsection (4).

**VII. Related Issues:**

The bill mentions that UF IFAS is “presently” reviewing the application rates. Making a statement of a transient process in statute as something that is “presently” happening may lead the statute to become inaccurate over time.

**VIII. Statutes Affected:**

This bill substantially amends sections 576.011, 576.045, and 403.067 of the Florida Statutes.

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

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

**CS/CS by Rules on February 10, 2022:**

- Replaces the term “rate tailoring” with the term “site-specific nutrient management” in every instance where it appears in the bill.
- Limits application of the bill to citrus.
- Revises legislative findings to:
  - Provide “nutrient application rate recommendations” are presently under review by the University of Florida Institute of Food and Agricultural Sciences (UF-IFAS) so that it can reflect the latest methods of producing agricultural commodities.
  - Expand upon the kinds of challenges faced by Florida citrus.

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<sup>73</sup> Section 576.045(1)(b), F.S.

- Requires preparation of a report to the Governor and Legislature by December 1, 2022.
- Adds an expiration date for the site-specific nutrient management subsection of December 31, 2027.

**CS by Environment and Natural Resources on January 10, 2022:**

- Revises the definition of “certified professional” to also require the individual to hold a 4R Nutrient Management Specialty certification.
- In the provision requiring producers using rate tailoring to be enrolled in and implementing all other best management practices adopted by the department and identified in the enrolled notice of intent, provides that in addition to the enrolled notice being required under subsections (5) and (6), it may also be required under s. 403.067(7)(c), F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 02/10/2022 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Rules (Albritton) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (5) through (33) and (34)  
through (42) of section 576.011, Florida Statutes, are  
redesignated as subsections (6) through (34) and (36) through  
(44), respectively, and new subsections (5) and (35) are added  
to that section, to read:

576.011 Definitions.—When used in this chapter, the term:  
(5) "Certified professional" means an individual who holds



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a certified crop adviser designation issued by the American Society of Agronomy, who has passed the society's Southeast Region Certified Crop Adviser Exam, who holds a 4R Nutrient Management Specialty certification, and whose credentials have been verified by the society's Florida Certified Crop Adviser Board.

(35) "Site-specific nutrient management" means the application of nutrients in accordance with s. 576.045(4).

Section 2. Section 576.045, Florida Statutes, is amended to read:

576.045 Nitrogen and phosphorus; findings and intent; fees; purpose; best management practices; waiver of liability; compliance; rules; exclusions; expiration.—

(1) FINDINGS AND INTENT.—

(a) The Legislature finds that:

1. Nitrogen and phosphorus residues have been found in groundwater, surface water, and drinking water in various areas throughout this the state at levels in excess of established water quality standards. The Legislature further finds that some fertilization-management practices could be a source of such contamination.

2. Nutrient application rate recommendations are presently under review by the University of Florida Institute of Food and Agricultural Sciences so that they can reflect the latest methods of producing agricultural commodities and changes to nutrient application practices which are appropriate due to disease, new crop varieties, changes in United States Department of Agriculture Agricultural Marketing Service standards, growing techniques, and market conditions.



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41       3. To gain efficiency and be able to compete successfully  
42 with foreign producers that benefit from lower costs of  
43 production and favorable trade conditions, many producers in  
44 this state grow more product per acre, resulting in higher  
45 production at lower overall costs. This high-efficiency crop  
46 production requires nutrient application to be based on the  
47 intensity of production on a per-acre basis, rather than the  
48 lower per-acre production on which past research based its  
49 recommended nutrient application rate.

50       4. Florida citrus faces challenges that include citrus  
51 greening, citrus canker, windstorms, a freeze in 2022 that  
52 resulted in the smallest citrus harvest since 1946, labor and  
53 supply chain shortages in 2022, and other events that result in  
54 the fruit not being harvested. In order to continue production  
55 of this state's iconic crop, nutrient application rates must  
56 reflect fruit grown on the tree after the bloom during the  
57 growing season and not fruit ultimately harvested for market  
58 delivery.

59       (b) It is the intent of the Legislature to:

60       1. Improve fertilization-management practices as soon as  
61 practicable in a way that protects ~~this~~ the state's water  
62 resources and preserves a viable agricultural industry. This  
63 goal is to be accomplished through research concerning best  
64 management practices and education and incentives for the  
65 agricultural industry and other major users of fertilizer.

66       2. Accommodate continued citrus production without  
67 interruption as research to formally revise nutrient application  
68 rates is completed.

69       3. Authorize the use of site-specific nutrient management



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for Florida citrus to adjust recommended nutrient application rates when site-specific nutrient management is supported by written recommendations from a certified professional and documented using production and field data that is retained for review during the best management practices implementation verification process.

(2) FEES.—

(a) In addition to the fees imposed under ss. 576.021 and 576.041, the following supplemental fees shall be collected and paid by licensees for the sole purpose of implementing this section:

1. One hundred dollars for each license to distribute fertilizer.

2. One hundred dollars for each specialty fertilizer registration.

3. Fifty cents per ton for all fertilizer that contains nitrogen or phosphorus and that is sold in this state.

(b) All fees paid to the department under this section are due and payable at the same time and in the same manner as the fees specified in ss. 576.021 and 576.041 and are subject to all provisions contained in those sections.

(c) All fees paid under this section must be deposited into the General Inspection Trust Fund and are exempt from ~~the provisions of~~ s. 215.20. These funds are to be appropriated annually to the department and allocated according to a memorandum of understanding between the department and the Department of Environmental Protection. The allocation of indirect costs to these funds by any state agency is specifically prohibited.



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(3) USE OF FUNDS PURPOSE.—The funds collected pursuant to subsection (2) must be used by the department for:

(a) Research, development, demonstration, and implementation of suitable interim measures, best management practices, or other measures used to achieve state water quality standards for nitrogen and phosphorus criteria, including site-specific nutrient management. Implementation of interim measures, best management practices, and other measures may include cost-sharing grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement.

(b) Completing the analysis, research plan and recommendations, and report required under paragraph (4) (b).

(c) Approving, adopting, publishing, and distributing interim measures, best management practices, or other measures. In the process of developing, approving, and adopting interim measures, best management practices, or other measures, the department shall consult with the Department of Environmental Protection, the Department of Health, the water management districts, environmental groups, the fertilizer industry, and representatives from the affected farming groups.

(d) ~~(e)~~ Reimbursing the Department of Environmental Protection for costs incurred which are associated with:

1. Monitoring and verifying the effectiveness of the interim measures, best management practices, or other measures approved and adopted under subsection (7) ~~(6)~~ at representative sites. The Department of Environmental Protection shall use its best professional judgment in making the initial determination of the effectiveness of the interim measures, best management



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practices, or other measures.

2. Sampling, analysis, and restoration of potable water supplies, pursuant to s. 376.307, found to contain levels of nitrate in excess of state water quality standards, which excess is determined to be the result of the application of fertilizers or other soil-applied nutritional materials containing nitrogen.

This subsection must be implemented through a memorandum of understanding between the department and the Department of Environmental Protection.

(4) SITE-SPECIFIC NUTRIENT MANAGEMENT.—

(a) The use of site-specific nutrient management to tailor recommended nutrient application rates is authorized for citrus crops where site-specific nutrient management is supported by a certified professional.

1. When recommended nutrient application rates published by the Institute of Food and Agricultural Sciences at the University of Florida or other state universities and Florida College System institutions that have agricultural research programs are not appropriate for a specific producer due to soil conditions, disease, crop varieties, subsequent crop rotations, planting density, market requirements, or site-specific conditions, written recommendations from a certified professional may be used to tailor the recommended nutrient application rates for that producer. The determination that the published nutrient application rates are not appropriate and the recommendation for the tailoring of nutrient application rates must be documented with one or more of the following records, as appropriate: soil tests, plant tissue tests, pathology reports,





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yield response curves, growth records, or site-specific conditions, together with records specifying the application rate, the types or forms of nutrients used, the nutrient sources used, and the placement and timing of the nutrient sources. A producer must retain the records for 5 years to support the use of site-specific nutrient management.

2. Citrus producers using site-specific nutrient management must be enrolled in and implementing all other best management practices adopted by the department and identified in the enrolled notice of intent required under subsections (5) and (6) and s. 403.067(7)(c).

3. Notwithstanding any other law, citrus producers implementing site-specific nutrient management in compliance with this section are provided a presumption of compliance with state water quality standards, may rely on the waiver of liability in subsection (5), and may be deemed to be in compliance with s. 403.067(7)(c) and subsections (5) and (6).

(b) The University of Florida Institute of Food and Agricultural Sciences shall analyze the use of site-specific nutrient management for crops other than citrus and crop rotations, develop a research plan and interim recommendations for implementation of site-specific nutrient management, and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2022.

(5) WAIVER OF LIABILITY.—Notwithstanding any other  
~~provision of law, the Department of Environmental Protection may not is not authorized to~~ institute proceedings against any person or the Federal Government under ~~the provisions of s.~~



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376.307(5) to recover any costs or damages associated with nitrogen or phosphorus contamination of groundwater or surface water, or the evaluation, assessment, or remediation of such contamination of groundwater or surface water, including sampling, analysis, and restoration of potable water supplies, where the contamination of groundwater or surface water is determined to be the result of the application of fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus, provided the property owner or leaseholder:

(a)1. Provides the department with a notice of intent to implement applicable interim measures, best management practices, or other measures adopted by the department which ~~practices or measures~~ have been verified by the Department of Environmental Protection to be effective; and

2. Implements applicable interim measures, best management practices, or other measures as soon as practicable according to rules adopted by the department or no longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus; or

(b) No longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus ~~as of the effective date of this section.~~

(6) ~~(5)~~ COMPLIANCE.—If the property owner or leaseholder implements interim measures, best management practices, or other measures adopted by the department which ~~practices or measures~~ have been verified by the Department of Environmental Protection to be effective, and complies with the following, there is a presumption of compliance with state water quality standards for such criteria under this section and s. 403.067(7)(c) with



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respect to the application of fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus:

(a)1. Provides the department with a notice of intent to implement applicable interim measures, best management practices, or other measures adopted by the department; and

2. Implements applicable interim measures, best management practices, or other measures as soon as practicable according to rules adopted by the department or no longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus; or

(b) No longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus ~~as of the effective date of this section.~~

(7)~~(6)~~ RULEMAKING.—The department, in consultation with the Department of Environmental Protection, the Department of Health, the water management districts, environmental groups, the fertilizer industry, and representatives from the affected farming groups, shall adopt rules to:

(a) Specify the requirements of interim measures, best management practices, or other measures to be implemented by property owners and leaseholders.

(b) Establish procedures for property owners and leaseholders to submit the notice of intent to implement and comply with interim measures, best management practices, or other measures.

(c) Establish schedules for implementation of interim measures, best management practices, or other measures.

(d) Establish a system to assure the implementation of best management practices, including recordkeeping requirements.



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(8)~~(7)~~ OTHER PROVISIONS.—

(a) This section does not limit the authority of the Department of Environmental Protection to regulate discharges associated with the commercial feeding of livestock and poultry defined in chapter 585, including that of dairy farm and egg production operations, or the disposal of sludge, residuals, or septage. This paragraph does not grant additional authority to regulate these discharges.

(b) This section does not limit federally delegated regulatory authority.

(c) The Department of Environmental Protection may adopt rules to establish criteria for dairy farms which provide reasonable assurance that state nitrate groundwater quality standards will not be violated and which, provided such criteria are met, shall prohibit the Department of Environmental Protection from instituting proceedings against any dairy farmer under ~~the provisions of~~ s. 376.307(5) and shall provide a presumption of compliance with safe nitrate groundwater quality standards.

(d) This section, except for subsection (2), does not apply to the manufacture, mixing, or blending of fertilizer, including fertilizer containing sludge, residuals, or septage.

(9)~~(8)~~ EXPIRATION OF PROVISIONS.—Subsection (4) expires on December 31, 2027. Subsections (1), (2), (3), (5) ~~(4)~~, and (7) ~~(6)~~ expire on December 31, 2032 ~~2022~~. Subsections (6) ~~(5)~~ and (8) ~~(7)~~ expire on December 31, 2037 ~~2027~~.

Section 3. Paragraph (c) of subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum



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daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources, and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services



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shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. When interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12)(b) must be verified at representative sites by the department. The department shall use its best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, when applicable, shall notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, or are authorized by s. 576.045, shall provide a presumption of compliance with state water quality standards and release from s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with



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the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. When water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. If the reevaluation determines that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a



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reasonable time period as specified in the rule.

5. Subject to subparagraph 6., the Department of Agriculture and Consumer Services shall provide to the department information obtained pursuant to subparagraph (d)3.

6. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3., 4., and 5. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

7. Subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

Section 4. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause





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and insert:

A bill to be entitled  
An act relating to nutrient application rates;  
amending s. 576.011, F.S.; defining the terms  
"certified professional" and "site-specific nutrient  
management"; amending s. 576.045, F.S.; providing  
legislative findings and intent; authorizing the use  
of site-specific nutrient management in specified  
circumstances; revising the authorized uses of  
specified funds; authorizing citrus producers to use  
written recommendations from certified professionals  
to tailor their recommended nutrient application rates  
under certain circumstances; requiring citrus  
producers to keep records regarding the determination  
that the published nutrient application rates are not  
appropriate and any recommendations for site-specific  
nutrient management for a specified period of time;  
requiring producers using site-specific nutrient  
management to enroll in and implement certain  
applicable best management practices; providing a  
presumption of compliance with certain requirements  
for producers using site-specific nutrient management;  
directing the University of Florida Institute of Food  
and Agricultural Sciences to analyze the use of site-  
specific nutrient management for certain crops,  
develop a research plan and certain recommendations,  
and submit a report to the Governor and Legislature by  
a specified date; extending the expiration of certain  
provisions; amending s. 403.067, F.S.; conforming a



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418 provision to changes made by the act; providing an  
419 effective date.

By the Committee on Environment and Natural Resources; and  
Senator Albritton

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A bill to be entitled

An act relating to nutrient application rates; amending s. 576.011, F.S.; defining the terms "certified professional" and "rate tailoring"; amending s. 576.045, F.S.; providing legislative findings and intent; authorizing the use of rate tailoring in specified circumstances; authorizing producers to use written recommendations from certified professionals to tailor their recommended nutrient application rates under certain circumstances; requiring producers to keep records regarding the determination that the published nutrient application rates are not appropriate and any recommendations for rate tailoring for a specified period of time; requiring producers using rate tailoring to enroll in and implement certain applicable best management practices; requiring revisions to recommended application rates by certain state universities and Florida College System institutions to authorize rate tailoring; providing a presumption of compliance with certain requirements for producers using rate tailoring; extending the expiration of a certain provision; amending s. 403.067, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Present subsections (5) through (31) and (32)

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through (42) of section 576.011, Florida Statutes, are redesignated as subsections (6) through (32) and (34) through (44), respectively, and new subsections (5) and (33) are added to that section, to read:

576.011 Definitions.—When used in this chapter, the term:

(5) "Certified professional" means an individual who holds a certified crop adviser designation issued by the American Society of Agronomy, who has passed the society's Southeast Region Certified Crop Adviser Exam, who holds a 4R Nutrient Management Specialty certification, and whose credentials have been verified by the society's Florida Certified Crop Adviser Board.

(33) "Rate tailoring" means the application of nutrients in accordance with s. 576.045(4).

Section 2. Section 576.045, Florida Statutes, is amended to read:

576.045 Nitrogen and phosphorus; findings and intent; fees; purpose; best management practices; waiver of liability; compliance; rules; exclusions; expiration.—

(1) FINDINGS AND INTENT.—

(a) The Legislature finds that:

1. Nitrogen and phosphorus residues have been found in groundwater, surface water, and drinking water in various areas throughout this the state at levels in excess of established water quality standards. The Legislature further finds that some fertilization-management practices could be a source of such contamination.

2. Nutrient application rate recommendations are general guidelines, not site-specific absolute rates, and that such

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rates may not take into account the latest methods of producing agricultural commodities or changes to nutrient application practices which are appropriate due to disease, new crop varieties, changes in United States Department of Agriculture Agricultural Marketing Service standards, growing techniques, or market conditions.

3. To gain efficiency and be able to compete successfully with foreign producers that benefit from lower costs of production and favorable trade conditions, many producers in this state grow more product per acre, resulting in higher production at lower overall costs. This high-efficiency crop production requires nutrient application to be based on the intensity of production on a per-acre basis, rather than the lower per-acre production on which past research based its recommended nutrient application rate.

4. Florida citrus faces challenges that include citrus greening, citrus canker, freezes, windstorms, and other events that result in the fruit not being harvested. In order to continue production of this state's iconic crop, nutrient application rates must reflect fruit grown on the tree after the bloom during the growing season and not fruit ultimately harvested for market delivery.

(b) It is the intent of the Legislature to:

1. Improve fertilization-management practices as soon as practicable in a way that protects ~~this~~ the state's water resources and preserves a viable agricultural industry. This goal is to be accomplished through research concerning best management practices and education and incentives for the agricultural industry and other major users of fertilizer.

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2. Accommodate continued agricultural production without interruption as research to formally revise nutrient application rates is completed.

3. Authorize the use of rate tailoring in recommended nutrient application rates when rate tailoring is supported by written recommendations from a certified professional and documented using production and field data that is retained for review during the best management practices implementation verification process.

(2) FEES.—

(a) In addition to the fees imposed under ss. 576.021 and 576.041, the following supplemental fees shall be collected and paid by licensees for the sole purpose of implementing this section:

1. One hundred dollars for each license to distribute fertilizer.

2. One hundred dollars for each specialty fertilizer registration.

3. Fifty cents per ton for all fertilizer that contains nitrogen or phosphorus and that is sold in this state.

(b) All fees paid to the department under this section are due and payable at the same time and in the same manner as the fees specified in ss. 576.021 and 576.041 and are subject to all provisions contained in those sections.

(c) All fees paid under this section must be deposited into the General Inspection Trust Fund and are exempt from ~~the provisions of~~ s. 215.20. These funds are to be appropriated annually to the department and allocated according to a memorandum of understanding between the department and the

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Department of Environmental Protection. The allocation of indirect costs to these funds by any state agency is specifically prohibited.

(3) ~~USE OF FUNDS PURPOSE.~~—The funds collected pursuant to subsection (2) must be used by the department for:

(a) Research, development, demonstration, and implementation of suitable interim measures, best management practices, or other measures used to achieve state water quality standards for nitrogen and phosphorus criteria. Implementation of interim measures, best management practices, and other measures may include cost-sharing grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement.

(b) Approving, adopting, publishing, and distributing interim measures, best management practices, or other measures. In the process of developing, approving, and adopting interim measures, best management practices, or other measures, the department shall consult with the Department of Environmental Protection, the Department of Health, the water management districts, environmental groups, the fertilizer industry, and representatives from the affected farming groups.

(c) Reimbursing the Department of Environmental Protection for costs incurred which are associated with:

1. Monitoring and verifying the effectiveness of the interim measures, best management practices, or other measures approved and adopted under subsection (7) ~~(6)~~ at representative sites. The Department of Environmental Protection shall use its best professional judgment in making the initial determination of the effectiveness of the interim measures, best management

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practices, or other measures.

2. Sampling, analysis, and restoration of potable water supplies, pursuant to s. 376.307, found to contain levels of nitrate in excess of state water quality standards, which excess is determined to be the result of the application of fertilizers or other soil-applied nutritional materials containing nitrogen.

This subsection must be implemented through a memorandum of understanding between the department and the Department of Environmental Protection.

(4) RATE TAILORING.—The use of rate tailoring to recommended nutrient application rates is authorized where rate tailoring is supported by a certified professional.

(a) When recommended nutrient application rates published by the Institute of Food and Agricultural Sciences at the University of Florida or other state universities and Florida College System institutions that have agricultural research programs are not appropriate for a specific producer due to soil conditions, disease, crop varieties, subsequent crop rotations, planting density, market requirements, or site-specific conditions, written recommendations from a certified professional may be used to tailor the recommended nutrient application rates for that producer. The determination that the published nutrient application rates are not appropriate and the recommendation for the tailoring of nutrient application rates must be documented with one or more of the following records, as appropriate: soil tests, plant tissue tests, pathology reports, yield response curves, growth records, or site-specific conditions, together with records specifying the application

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rate, the types or forms of nutrients used, the nutrient sources used, and the placement and timing of the nutrient sources. A producer must retain the records for 5 years to support the use of rate tailoring.

(b) Producers using rate tailoring must be enrolled in and implementing all other best management practices adopted by the department and identified in the enrolled notice of intent required under subsections (5) and (6) or s. 403.067(7)(c).

(c) As recommended nutrient application rates for crops are revised by the Institute of Food and Agricultural Sciences at the University of Florida or other state universities and Florida College System institutions that have agricultural research programs, such recommendations must provide an application range or authorize rate tailoring to crop and field conditions.

(d) Notwithstanding any other law, producers implementing rate tailoring in compliance with this section are provided a presumption of compliance with state water quality standards, may rely on the waiver of liability in subsection (5), and be deemed to be in compliance with s. 403.067(7)(c) and subsections (5) and (6).

(5) WAIVER OF LIABILITY.—Notwithstanding any other ~~provision of~~ law, the Department of Environmental Protection may ~~not is not authorized to~~ institute proceedings against any person or the Federal Government under ~~the provisions of~~ s. 376.307(5) to recover any costs or damages associated with nitrogen or phosphorus contamination of groundwater or surface water, or the evaluation, assessment, or remediation of such contamination of groundwater or surface water, including

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sampling, analysis, and restoration of potable water supplies, where the contamination of groundwater or surface water is determined to be the result of the application of fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus, provided the property owner or leaseholder:

(a)1. Provides the department with a notice of intent to implement applicable interim measures, best management practices, or other measures adopted by the department which ~~practices or measures~~ have been verified by the Department of Environmental Protection to be effective; and

2. Implements applicable interim measures, best management practices, or other measures as soon as practicable according to rules adopted by the department or no longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus; or

(b) No longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus ~~as of the effective date of this section.~~

~~(6)(5)~~ COMPLIANCE.—If the property owner or leaseholder implements interim measures, best management practices, or other measures adopted by the department which ~~practices or measures~~ have been verified by the Department of Environmental Protection to be effective, and complies with the following, there is a presumption of compliance with state water quality standards for such criteria under this section and s. 403.067(7)(c) with respect to the application of fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus:

(a)1. Provides the department with a notice of intent to implement applicable interim measures, best management

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practices, or other measures adopted by the department; and

2. Implements applicable interim measures, best management practices, or other measures as soon as practicable according to rules adopted by the department or no longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus; or

(b) No longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus ~~as of the effective date of this section.~~

(7) (6) RULEMAKING.—The department, in consultation with the Department of Environmental Protection, the Department of Health, the water management districts, environmental groups, the fertilizer industry, and representatives from the affected farming groups, shall adopt rules to:

(a) Specify the requirements of interim measures, best management practices, or other measures to be implemented by property owners and leaseholders.

(b) Establish procedures for property owners and leaseholders to submit the notice of intent to implement and comply with interim measures, best management practices, or other measures.

(c) Establish schedules for implementation of interim measures, best management practices, or other measures.

(d) Establish a system to assure the implementation of best management practices, including recordkeeping requirements.

(8) (7) OTHER PROVISIONS.—

(a) This section does not limit the authority of the Department of Environmental Protection to regulate discharges associated with the commercial feeding of livestock and poultry

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defined in chapter 585, including that of dairy farm and egg production operations, or the disposal of sludge, residuals, or septage. This paragraph does not grant additional authority to regulate these discharges.

(b) This section does not limit federally delegated regulatory authority.

(c) The Department of Environmental Protection may adopt rules to establish criteria for dairy farms which provide reasonable assurance that state nitrate groundwater quality standards will not be violated and which, provided such criteria are met, shall prohibit the Department of Environmental Protection from instituting proceedings against any dairy farmer under ~~the provisions of~~ s. 376.307(5) and shall provide a presumption of compliance with safe nitrate groundwater quality standards.

(d) This section, except for subsection (2), does not apply to the manufacture, mixing, or blending of fertilizer, including fertilizer containing sludge, residuals, or septage.

(9) (8) EXPIRATION OF PROVISIONS.—Subsections (1), (2), (3), (5) (4), and (7) (6) expire on December 31, 2032 ~~2022~~. Subsections (4), (6), (5) and (8) (7) expire on December 31, 2037 ~~2027~~.

Section 3. Paragraph (c) of subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(c) *Best management practices.*—

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291 1. The department, in cooperation with the water management  
292 districts and other interested parties, as appropriate, may  
293 develop suitable interim measures, best management practices, or  
294 other measures necessary to achieve the level of pollution  
295 reduction established by the department for nonagricultural  
296 nonpoint pollutant sources in allocations developed pursuant to  
297 subsection (6) and this subsection. These practices and measures  
298 may be adopted by rule by the department and the water  
299 management districts and, where adopted by rule, shall be  
300 implemented by those parties responsible for nonagricultural  
301 nonpoint source pollution.

302 2. The Department of Agriculture and Consumer Services may  
303 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54  
304 suitable interim measures, best management practices, or other  
305 measures necessary to achieve the level of pollution reduction  
306 established by the department for agricultural pollutant sources  
307 in allocations developed pursuant to subsection (6) and this  
308 subsection or for programs implemented pursuant to paragraph  
309 (12)(b). These practices and measures may be implemented by  
310 those parties responsible for agricultural pollutant sources,  
311 and the department, the water management districts, and the  
312 Department of Agriculture and Consumer Services shall assist  
313 with implementation. In the process of developing and adopting  
314 rules for interim measures, best management practices, or other  
315 measures, the Department of Agriculture and Consumer Services  
316 shall consult with the department, the Department of Health, the  
317 water management districts, representatives from affected  
318 farming groups, and environmental group representatives. Such  
319 rules must also incorporate provisions for a notice of intent to

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320 implement the practices and a system to assure the  
321 implementation of the practices, including site inspection and  
322 recordkeeping requirements.

323 3. When interim measures, best management practices, or  
324 other measures are adopted by rule, the effectiveness of such  
325 practices in achieving the levels of pollution reduction  
326 established in allocations developed by the department pursuant  
327 to subsection (6) and this subsection or in programs implemented  
328 pursuant to paragraph (12)(b) must be verified at representative  
329 sites by the department. The department shall use its best  
330 professional judgment in making the initial verification that  
331 the best management practices are reasonably expected to be  
332 effective and, when applicable, shall notify the appropriate  
333 water management district or the Department of Agriculture and  
334 Consumer Services of its initial verification before the  
335 adoption of a rule proposed pursuant to this paragraph.  
336 Implementation, in accordance with rules adopted under this  
337 paragraph, of practices that have been initially verified to be  
338 effective, or verified to be effective by monitoring at  
339 representative sites, by the department, or are authorized by s.  
340 576.045, shall provide a presumption of compliance with state  
341 water quality standards and release from s. 376.307(5) for those  
342 pollutants addressed by the practices, and the department is not  
343 authorized to institute proceedings against the owner of the  
344 source of pollution to recover costs or damages associated with  
345 the contamination of surface water or groundwater caused by  
346 those pollutants. Research projects funded by the department, a  
347 water management district, or the Department of Agriculture and  
348 Consumer Services to develop or demonstrate interim measures or



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best management practices shall be granted a presumption of compliance with state water quality standards and a release from s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. When water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. If the reevaluation determines that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Subject to subparagraph 6., the Department of Agriculture and Consumer Services shall provide to the department information obtained pursuant to subparagraph (d)3.

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6. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3., 4., and 5. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

7. Subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

Section 4. This act shall take effect July 1, 2022.

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Meeting Date

Rules 11am 412 KB

Committee

The Florida Senate

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Bill Number or Topic

628210

Amendment Barcode (if applicable)

Name

DAVID CULLEN

Phone

941-323-2404

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Street

OCEAN CITY

MD

21842

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

### PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

SIERRA CLUB FLORIDA

☐

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

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

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S-001 (08/10/2021)

2/10/2022

Meeting Date

Rules

Committee

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Beth Alvi

Phone

850-999-1028

Address

308 N. Monroe

Email

beth.alvi@audubon.org

Street

32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without compensation or sponsorship.

☒

I am a registered lobbyist, representing:

Audubon Florida

☐

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

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

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S-001 (08/10/2021)

The Florida Senate  
**APPEARANCE RECORD**

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SB 1000 C1

Bill Number or Topic

628210

Amendment Barcode (if applicable)

The Florida Senate

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2/10/2022

Meeting Date

Rules

Committee

SB 1000 (As Amended)

Bill Number or Topic

Amendment Barcode (if applicable)

Name Garrett Wallace

Phone 1-561-504-6877

Address 2500 Maitland Center Pkwy

Email Garrett.Wallace@TNC.ORG

Street

Maitland

City

FL

State

32751

Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:  
The Nature Conservancy

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

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

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S-001 (08/10/2021)

2/10/22

Meeting Date

Rules 11am 412 KB

Committee

Name DAVID CULLEN

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State

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The Florida Senate

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Bill Number or Topic

Amendment Barcode (if applicable)

Phone 941-323-2404

Email cullenasea@gmail.com

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

## PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

SIERRA CLUB FLORIDA

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

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

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S-001 (08/10/2021)

The Florida Senate

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2/10/22

Meeting Date

SB 1000

Bill Number or Topic

RULES

Committee

Amendment Barcode (if applicable)

Name

Hailey Busch

Phone

850-264-4449

Address

308 N MONROE ST.

Email

HBUSCH@1000FOF.ORG

Street

TALLAHASSEE

State

32301

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

2000 Friends of  
Florida

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

2/10/22

Meeting Date

1000

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Lindsay Cross

Phone

Address

1700 N Monroe 11-286

Email

lindsay@fcvoters.org

Street

Tally

City

FL

State

32301

Zip

Speaking:

☐ For

☒ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

☐

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

Florida conservation voters

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

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S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

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SB 1000

Bill Number or Topic

Amendment Barcode (if applicable)

2/10/22

Meeting Date

Rules

Committee

Name

Matt Joyner - Florida Citrus Mutual

Phone

863-255-1638

Address

600 W Broadway

Street

Tampa

City

FL

State

33830

Zip

Email

mattj@fcitrasmutual.com

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

FL Citrus Mutual

☐

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

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11,045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)



The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
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2/9/22

Meeting Date

1000

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Jim Spratt

Phone

850 228 1296

Address

119 S Monroe St

Email

jimemagallastrategiesllc.com

Street

TLH

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

FLORIDA Nursery Growers & LANDSCAPE  
Association

☐

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

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

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S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

2/10/22

Meeting Date

1000

Bill Number or Topic

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Adam Basford

Phone

223 7173

Address

516 N Adams

Email

abasford@a.f.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

Associated Industries of FL

☐

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

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

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S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

Feb 10, 2022

Meeting Date

SB 1000

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

John Walt Boatright

Phone

Address

310 W College Avenue

Email

Street

Tallahassee FL

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:  
Florida Farm Bureau

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

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

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 1002

INTRODUCER: Community Affairs Committee and Senator Burgess

SUBJECT: Florida Citrus

DATE: February 8, 2022

REVISED: \_\_\_\_\_

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|------------|----------------|-----------|------------------|
| 1. Fink    | Becker         | AG        | <b>Favorable</b> |
| 2. Hackett | Ryon           | CA        | <b>Fav/CS</b>    |
| 3. Fink    | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1002 creates the "Citrus Recovery Act." Specifically, the bill:

- Increases the membership of the Florida Citrus Commission (commission) from nine members to eleven;
- Increases the number of citrus districts from three to six and revises the counties that comprise each district;
- Requires certain entities to provide reports on citrus production research to the commission at specified intervals and upon request of the commission;
- Requires that new varieties of citrus fruit and certain technology produced from research or studies funded by state funds be made exclusively available for licensing and purchase to certain Florida producers for a specified timeframe;
- Requires producers who receive such exclusivity to retain the exclusivity for a specified timeframe and providing pricing requirements for such arrangements; and
- Requires moneys in the Florida Citrus Advertising Trust Fund to be expended for the activities authorized by s. 601.13, F.S.

**II. Present Situation:**

The Florida Citrus Commission acts as the head of the Department of Citrus. The commission is composed of nine representatives of the citrus industry who are citizens of the state and have at

least five years of experience as citrus growers, packers or processors.<sup>1</sup> Additionally, during the five years immediately prior to appointment, each member must have derived a major portion of his/her income from activities listed above or been the owner of, member of, officer of, or paid employee of a corporation, firm, or partnership which has derived the major portion of its income from the growing, growing and shipping, or growing and processing of citrus fruit.

Members of the commission are appointed by the governor for three year terms.<sup>2</sup> Appointments are made by February 1 preceding the commencement of the term and must be confirmed by the Senate in the following legislative session. Four members are appointed each year. Members serve until their respective successors are appointed and qualified. The regular terms begin on June 1 and end on May 31 of the third year after appointment. Effective July 1, 2011, the terms of all members of the commission appointed on or before May 1, 2011, were terminated and the Governor appointed members in accordance with the provisions of chapter 601, F.S.

When appointments are made, the Governor publicly announces the actual classification and district that each appointee represents. A majority of the members of the commission constitutes a quorum for the transaction of business and for carrying out the duties of the commission. Prior to beginning their duties as members of the commission, each member must take and subscribe to the oath of office as prescribed in s. 5, Art. 11 of the State Constitution.

The commission must elect a chair and vice chair and such other officers as it deems necessary.<sup>3</sup> The chair, with the concurrence of the commission, may appoint such advisory committees or councils composed of industry representatives as he/she deems appropriate. In appointing such committees or councils, the chair must set forth areas of committee or council concern that are consistent with the statutory powers and duties of the commission and the department.

Current law provides legislative intent that the commission be redistricted every five years. Redistricting is based on the total boxes produced from each of the three districts during that five-year period. Under current law, Citrus District One is composed of Levy, Alachua, Brevard, Putnam, St. Johns, St. Lucie, Flagler, Indian River, Marion, Seminole, Orange, Okeechobee, Polk, Volusia, and Osceola Counties.<sup>4</sup> Citrus District Two is composed of Hardee, DeSoto, Highlands, and Glades Counties.<sup>5</sup> Finally, Citrus District Three is composed of Charlotte, Citrus, Collier, Hernando, Hendry, Hillsborough, Lake, Lee, Manatee, Monroe, Martin, Pasco, Palm Beach, Pinellas, Sarasota, Sumter, Broward, and Miami-Dade Counties.<sup>6</sup>

### **III. Effect of Proposed Changes:**

**Section 1** titles this Act the “Citrus Recovery Act”.

**Section 2** amends s. 601.04, F.S., to revise the qualifications and terms of members of the

---

<sup>1</sup> Fla. Stat. Ann. § 601.04(1)(a)

<sup>2</sup> Fla. Stat. Ann. § 601.04(2)(b)

<sup>3</sup> Fla. Stat. Ann. § 601.04(3)(a)

<sup>4</sup> Fla. Stat. Ann. § 601.09(1)(a)

<sup>5</sup> Fla. Stat. Ann. § 601.09(1)(b)

<sup>6</sup> Fla. Stat. Ann. § 601.09(1)(c)

Florida Citrus Commission (commission). It provides that the commission shall be composed of eleven members, an increase from nine, who are appointed by the Governor. These members must be a resident of this state, rather than a citizen, as previously required.

The bill increases from six to seven the number of members that shall be classified as grower members. These grower members may not be disqualified as a member if, individually, or as the owner of, a member of, an officer of, or a stockholder of a corporation, firm, or partnership primarily engaged in citrus growing which processes, packs, and markets its own fruit and whose business is primarily not purchasing and handling fruit grown by others.

One grower member shall be appointed from each of the citrus districts designated in s. 601.09, F.S. Current law provides that a member must reside in the district from which they were appointed, whereas the bill specifies that a member must reside or grow citrus in the district. One additional grower member shall be a grower with a citrus producing area of more than 5,001 acres who resides and grows citrus in the state.

The bill requires that three members of the commission shall be classified as processor members instead of grower-handler members. These three members shall be engaged as owners, or as paid officers or employees, of a corporation, firm, partnership, or other business unit engaged in canning, concentrating, or otherwise processing citrus fruit for market other than for shipment in fresh fruit form.

The bill requires that one member shall be classified as a packer member and shall be engaged as an owner, or as a paid officer or employee, of a corporation, firm, partnership, or other business unit that operates as a packinghouse as defined in s. 601.03, F.S. The member shall reside in the Indian River production area as defined in s. 601.091, F.S.

Members shall be appointed to terms of 3 years each, except that, to establish staggered terms of members from each citrus district, the terms of members appointed before July 1, 2022, shall be as follows:

- The terms of two grower members and one packer member shall expire June 30, 2022, and their successors shall be appointed to terms beginning July 1, 2022, and expiring May 31, 2025.
- The terms of two grower members and one processor members shall expire June 30, 2023, and their successors shall be appointed to terms beginning July 1, 2023, and expiring May 31, 2026.
- The terms of two grower members and one processor member shall expire June 30, 2024, and their successors shall be appointed to terms beginning July 1, 2024, and ending May 31, 2027.
- One grower member and one processor member shall be appointed on or after July 1, 2022, with terms ending May 31, 2025.

**Section 3** increases the number of Citrus districts from three to six as follows:

- Citrus District One: Collier, Hendry, and Lee Counties.
- Citrus District Two: Charlotte and Desoto Counties.
- Citrus District Three: Glades, Highlands, and Okeechobee Counties.

- Citrus District Four: Hardee, Hillsborough, Manatee, Pinellas, and Sarasota Counties.
- Citrus District Five: Citrus, Hernando, Levy, Osceola, Pasco, Polk, and Sumter Counties.
- Citrus District Six: Alachua, Brevard, Broward, Flagler, Indian River, Lake, Marion, Martin, Miami-Dade, Monroe, Orange, Palm Beach, Putnam, St. Johns, Seminole, St. Lucie, and Volusia Counties.

**Section 4** adds requirements relating to citrus research administered by the Department of Citrus (department).

It requires that an entity that solicits research proposals and awards funding for those proposals, expending State Treasury funds on citrus production research conducted pursuant to ch. 573, F.S., as recommended by the Citrus Research and Development Foundation, Inc., or conducted through contract with the department shall deliver a report that includes all of the following information to the commission biannually and at the request of the commission:

- Project plans selected for funding;
- The financial status of the projects;
- Current findings of the funded research;
- Availability of citrus products or application of growers' practices found through funded research; and
- The status of the commercialization process of such products or practices.

It also requires that before being released for sale to the general public, any new variety of citrus fruit and any technology that enhances marketability of new or current citrus varieties which is developed as a result of any research or study accomplished using funds from the State Treasury must be made available:

- For licensing and purchase for a period of 90 days exclusively to any Florida not-for-profit corporation that is a producer engaged, excluding engagement in agricultural commodities other than citrus, in citrus rootstock or scion breeding, research, or licensing, by agreement with a state land grant university, the department, the Department of Agriculture and Consumer Services, or the United States Department of Agriculture. If a producer exercises such exclusive availability, the producer must retain the exclusivity for 8 years after the date of execution.
- At the 5-year rolling average cost of citrus bud or grafting material available to Florida producers, including a development incentive that does not exceed 10 percent of the 5-year average.

**Section 5** amends s. 601.992, F.S., to provide that the Department of either Citrus or Agriculture may collect or compel regulated entities to collect dues, contributions, or other payment upon request by, and on behalf of, any not-for-profit corporation, if such non-profit is engaged in market news and grower education solely for citrus growers and has at least 2,500, rather than 5,000 as provided in current law, members engaged in growing citrus.

**Section 6** reenacts s. 600.051(1), F.S., which grants the department the power to enter into, administer, and enforce marketing agreements with handlers and distributors engaged in any one or more of the citrus districts established in and by s. 601.09, F.S.

**Section 7** reenacts s. 601.15(7)(b), F.S., to require moneys in the Florida Citrus Advertising Trust Fund to be expended for the activities authorized by s. 601.13, F.S. and for the cost of those general overhead, research and development, maintenance, salaries, professional fees, enforcement costs, and other such expenses that are not related to advertising, merchandising, public relations, trade luncheons, publicity, and other associated activities. The cost of general overhead, maintenance, salaries, professional fees, enforcement costs, and other such expenses that are related to advertising, merchandising, public relations, trade luncheons, publicity, and associated activities shall be paid from the balance of the Florida Citrus Advertising Trust Fund.

**Section 8** provides an effective date of July 1, 2022.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 601.04, 601.09, 601.10, 601.13, and 601.992.

This bill reenacts the following sections of the Florida Statutes: 600.051(1), 601.15(7)(b).

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

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

**CS by Community Affairs on February 2, 2022:**

The CS:

- Removes the provision that each grower member of the Florida Citrus Commission must be a grower with a citrus producing area between 250 and 5,000 acres.
- Alters the schedule of commissioner appointments and terms.
- Alters the provision regarding exclusivity for new varieties of citrus developed using state funds, providing that such fruit must be made available as a first option for licensing exclusively to the Florida Department of Citrus or its designee.

**B. Amendments:**

None.

By the Committee on Community Affairs; and Senator Burgess

578-02647-22

20221002c1

1 A bill to be entitled  
 2 An act relating to Florida citrus; providing a short  
 3 title; amending s. 601.04, F.S.; revising the  
 4 membership of the Florida Citrus Commission; requiring  
 5 members to meet certain requirements; revising  
 6 commission appointments to achieve staggered terms for  
 7 the newly appointed members; revising the requirements  
 8 for a quorum; amending s. 601.09, F.S.; increasing the  
 9 number of citrus districts in this state and revising  
 10 the counties that comprise each district; amending s.  
 11 601.13, F.S.; requiring certain entities to provide  
 12 reports on citrus production research to the  
 13 commission at specified intervals and upon request of  
 14 the commission; specifying requirements for the  
 15 reports; requiring that new varieties of citrus fruit  
 16 produced from research or studies funded by state  
 17 funds be made exclusively available for licensing and  
 18 commercialization to the Department of Citrus or its  
 19 designee for a specified timeframe; amending s.  
 20 601.992, F.S.; revising eligibility requirements for  
 21 not-for-profit corporations that may be required to  
 22 collect certain payments from their members;  
 23 reenacting s. 600.051(1), F.S., relating to marketing  
 24 agreements and the powers of the department, to  
 25 incorporate the amendment made to s. 601.09, F.S., in  
 26 a reference thereto; reenacting s. 601.15(7)(b), F.S.,  
 27 relating to the use of moneys in the Florida Citrus  
 28 Advertising Trust Fund, to incorporate the amendment  
 29 made to s. 601.13, F.S., in references thereto;

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578-02647-22

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30 providing an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. This act may be cited as the "Citrus Recovery  
 35 Act."  
 36 Section 2. Section 601.04, Florida Statutes, is amended to  
 37 read:  
 38 601.04 Florida Citrus Commission; creation and membership.—  
 39 (1)(a) There is created within the department the Florida  
 40 Citrus Commission, which shall be composed of 11 ~~nine~~ members  
 41 appointed by the Governor. Each member must be a resident  
 42 ~~citizen~~ of this ~~the~~ state who is and has been actively engaged  
 43 in the growing, growing and shipping, or growing and processing  
 44 of citrus fruit in the state for at least 5 years immediately  
 45 before appointment to the commission and has, during that 5-year  
 46 period:  
 47 1. Derived a major portion of her or his income from such  
 48 growing, growing and shipping, or growing and processing of  
 49 citrus fruit; or  
 50 2. Been the owner of, member of, officer of, or paid  
 51 employee of a corporation, firm, or partnership that has, during  
 52 that 5-year period, derived the major portion of its income from  
 53 such growing, growing and shipping, or growing and processing of  
 54 citrus fruit.  
 55 (b)1. Seven ~~Six~~ members of the commission shall be  
 56 classified as grower members and shall be primarily engaged in  
 57 the growing of citrus fruit as an individual owner; as the owner  
 58 of, or as stockholder of, a corporation; or as a member of a

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59 firm or partnership primarily engaged in citrus growing. Such  
 60 members may not receive any compensation from any licensed  
 61 citrus fruit dealer or handler, as defined in s. 601.03, other  
 62 than gift fruit shippers, but any of the grower members may  
 63 ~~shall~~ not be disqualified as a member if, individually, or as  
 64 the owner of, a member of, an officer of, or a stockholder of a  
 65 corporation, firm, or partnership primarily engaged in citrus  
 66 growing which processes, packs, and markets its own fruit and  
 67 whose business is primarily not purchasing and handling fruit  
 68 grown by others.

69 2. Three members of the commission shall be classified as  
 70 processor ~~grower handler~~ members and shall be engaged as owners,  
 71 or as paid officers or employees, of a corporation, firm,  
 72 partnership, or other business unit engaged in canning,  
 73 concentrating, or otherwise processing citrus fruit for market  
 74 other than for shipment in fresh fruit form ~~handling citrus~~  
 75 ~~fruit. One such member shall be primarily engaged in the fresh~~  
 76 ~~fruit business, and two such members shall be primarily engaged~~  
 77 ~~in the processing of citrus fruits.~~

78 3. One member shall be classified as a packer member and  
 79 shall be engaged as an owner, or as a paid officer or employee,  
 80 of a corporation, firm, partnership, or other business unit that  
 81 operates as a packinghouse as defined in s. 601.03. The member  
 82 shall reside in the Indian River production area of this state  
 83 as defined in s. 601.091(2).

84 4. For purposes of this section, a member's residence is  
 85 his or her actual physical and permanent residence.

86 (2) (a) One grower member ~~Three commission members~~ shall be  
 87 appointed from each of the ~~three~~ citrus districts designated in

578-02647-22

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88 s. 601.09. ~~Members appointed from the same citrus district shall~~  
 89 ~~serve staggered terms, such that the term of one of the~~  
 90 ~~district's three members expires each year.~~ Each member must  
 91 reside or grow citrus in the district from which she or he was  
 92 appointed. ~~For the purposes of this section, a member's~~  
 93 ~~residence is her or his actual physical and permanent residence.~~

94 (b) One grower member shall be a grower with a citrus  
 95 producing area of more than 5,001 acres. The grower must reside  
 96 and grow citrus in this state.

97 (c) Members shall be appointed to terms of 3 years each,  
 98 except that, to establish staggered terms of members from each  
 99 citrus district, the terms of members appointed before July 1,  
 100 2022 ~~2012~~, shall be ~~shortened~~ as follows:

101 1. The terms ~~term~~ of two grower members and one packer  
 102 member ~~one member from each citrus district~~ shall expire June  
 103 30, 2022 ~~2012~~, and their successors ~~her or his successor~~ shall  
 104 be appointed to terms ~~a term~~ beginning July 1, 2022 ~~2012~~, and  
 105 expiring May 31, 2025 ~~2015~~.

106 2. The terms ~~term~~ of two grower members and one processor  
 107 member ~~one member from each citrus district~~ shall expire June  
 108 30, 2023 ~~2013~~, and their successors ~~her or his successor~~ shall  
 109 be appointed to terms ~~a term~~ beginning July 1, 2023 ~~2013~~, and  
 110 expiring May 31, 2026 ~~2016~~.

111 3. The terms ~~term~~ of two grower members and one processor  
 112 member ~~one member from each citrus district~~ shall expire June  
 113 30, 2024 ~~2014~~, and their successors ~~her or his successor~~ shall  
 114 be appointed to terms ~~a term~~ beginning July 1, 2024 ~~2014~~, and  
 115 ending May 31, 2027 ~~2017~~.

116 4. One grower member and one processor member shall be

578-02647-22

20221002c1

appointed on or after July 1, 2022, with terms ending May 31, 2025.

5. Subsequent appointments shall be made in accordance with this section.

Appointments shall be made by February 1 preceding the commencement of the term and are subject to confirmation by the Senate in the following legislative session. Each member is eligible for reappointment and shall serve until her or his successor is appointed and qualified. The regular terms begin on June 1 and expire on May 31 of the third year after such appointment.

(d) ~~(e)~~ When appointments are made, the Governor shall publicly announce the actual classification and district that each appointee represents. A majority of the members of the commission currently appointed constitutes ~~shall constitute~~ a quorum for the transaction of all business and the carrying out of the duties of the commission. Before entering upon the discharge of their duties as members of the commission, each member shall take and subscribe to the oath of office prescribed in s. 5, Art. II of the State Constitution. The qualifications and classification required of each member by this section continue to be required throughout the respective term of office, and if a member, after appointment, fails to meet the qualifications or classification that she or he possessed at the time of appointment, the member must resign or be removed and be replaced with a member possessing the proper qualifications and classification.

(e) ~~(d)~~ When making an appointment to the commission, the

Page 5 of 11

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578-02647-22

20221002c1

Governor shall announce the district, classification, and term of the person appointed.

(3) (a) The commission shall elect a chair and secretary and may elect a vice chair and such other officers as the commission deems advisable.

(b) The chair, subject to commission concurrence, may appoint such advisory committees or councils composed of industry representatives as the chair deems appropriate, setting forth the committee or council concerns that are consistent with the statutory powers and duties of the commission and the department.

Section 3. Section 601.09, Florida Statutes, is amended to read:

601.09 Citrus districts.—

(1) For purposes of this chapter, the state is divided into six ~~three~~ districts composed of:

(a) Citrus District One: Collier, Hendry, and Lee ~~Levy, Alachua, Brevard, Putnam, St. Johns, St. Lucie, Flagler, Indian River, Marion, Seminole, Orange, Okeechobee, Polk, Volusia, and Osceola~~ Counties.

(b) Citrus District Two: Charlotte and Hardee ~~DeSoto, Highlands, and Glades~~ Counties.

(c) Citrus District Three: Glades, Highlands, and Okeechobee ~~Charlotte, Citrus, Collier, Hernando, Hendry, Hillsborough, Lake, Lee, Manatee, Monroe, Martin, Pasco, Palm Beach, Pinellas, Sarasota, Sumter, Broward, and Miami-Dade~~ Counties.

(d) Citrus District Four: Hardee, Hillsborough, Manatee, Pinellas, and Sarasota Counties.

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(e) Citrus District Five: Citrus, Hernando, Levy, Osceola, Pasco, Polk, and Sumter Counties.

(f) Citrus District Six: Alachua, Brevard, Broward, Flagler, Indian River, Lake, Marion, Martin, Miami-Dade, Monroe, Orange, Palm Beach, Putnam, St. Johns, Seminole, St. Lucie, and Volusia Counties.

(2) The Legislature intends that the citrus districts be reviewed and, if necessary to maintain substantially equal volumes of citrus production within each district, redistricted every 5 years. The commission may, once every 5 years, review the citrus districts based on the total boxes produced within each district during the preceding 5 years and, based on the commission's findings, submit recommendations to the Legislature for redistricting in accordance with this subsection.

Section 4. Present subsection (3) of section 601.13, Florida Statutes, is redesignated as subsection (5), and a new subsection (3) and subsection (4) are added to that section, to read:

601.13 Citrus research; administration by Department of Citrus; appropriation.—

(3) An entity that solicits research proposals and awards funding for those proposals expending funds received from the State Treasury on citrus production research conducted pursuant to chapter 573, as recommended by the Citrus Research and Development Foundation, Inc., or conducted through contract with the department shall deliver a report that includes all of the following information to the commission biannually and at the request of the commission:

(a) Project plans selected for funding.

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(b) The financial status of the projects.

(c) Current findings of the funded research.

(d) Availability of citrus products or application of growers' practices found through funded research.

(e) The status of the commercialization process of such products or practices.

(4) Before being released for sale to the general public, any new variety of citrus fruit which is developed as a result of any research or study accomplished using any percentage of funds from the State Treasury as well as any technology that enhances the marketability of new or current citrus varieties must be made available as a first option for licensing and commercialization for a period of 90 days, under commercially reasonable terms, exclusively to the Florida Department of Citrus or its designee. If the Florida Department of Citrus or its designee exercises such exclusive license, the Florida Citrus Commission may retain the exclusivity for up to 8 years after the date of execution.

Section 5. Section 601.992, Florida Statutes, is amended to read:

601.992 Collection of dues and other payments on behalf of certain nonprofit corporations engaged in market news and grower education.—The Department of Citrus or the Department of Agriculture or their successors may collect or compel the entities regulated by the Department of Citrus to collect dues, contributions, or any other financial payment upon request by, and on behalf of, any not-for-profit corporation and its related not-for-profit corporations located in this state that receive payments or dues from their members. Such not-for-profit

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corporation must be engaged, to the exclusion of agricultural commodities other than citrus, in market news and grower education solely for citrus growers, and must have at least 2,500 ~~5,000~~ members who are engaged in growing citrus in this state for commercial sale. The Department of Citrus may adopt rules to administer this section. The rules may establish indemnity requirements for the requesting corporation and for fees to be charged to the corporation that are sufficient but do not exceed the amount necessary to ensure that any direct costs incurred by the Department of Citrus in implementing this section are borne by the requesting corporation and not by the Department of Citrus.

Section 6. For the purpose of incorporating the amendment made by this act to section 601.09, Florida Statutes, in a reference thereto, subsection (1) of section 600.051, Florida Statutes, is reenacted to read:

600.051 Marketing agreements; powers of department.—

(1) In order to effectuate the declared policy and purposes of this act, the department shall have the power to enter into, administer, and enforce marketing agreements with handlers and distributors engaged in any one or more of the citrus districts established in and by s. 601.09, in the handling and distributing of citrus fruit in fresh fruit form or any variety or varieties, grade, size, or quality thereof, regulating the handling of such citrus fruit in the way and manner and to the extent therein prescribed and agreed upon, which said marketing agreements shall be binding only upon the signatories thereto exclusively. The execution of any such marketing agreement shall in no manner affect the issuance, administration, or enforcement

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of any marketing order otherwise provided for by chapter 601, and any marketing agreement executed hereunder shall be ineffective to the extent that it is in conflict with any rule, regulation, marketing order, or marketing agreement under any federal law relating to the handling of citrus fruit grown in Florida.

Section 7. For the purpose of incorporating the amendment made by this act to section 601.13, Florida Statutes, in a reference thereto, paragraph (b) of subsection (7) of section 601.15, Florida Statutes, is reenacted to read:

601.15 Advertising campaign; methods of conducting; assessments; emergency reserve fund; citrus research.—

(7) All assessments levied and collected under this chapter shall be paid into the State Treasury on or before the 15th day of each month. Such moneys shall be accounted for in a special fund to be designated as the Florida Citrus Advertising Trust Fund, and all moneys in such fund are appropriated to the department for the following purposes:

(b) Moneys in the Florida Citrus Advertising Trust Fund shall be expended for the activities authorized by s. 601.13 and for the cost of those general overhead, research and development, maintenance, salaries, professional fees, enforcement costs, and other such expenses that are not related to advertising, merchandising, public relations, trade luncheons, publicity, and other associated activities. The cost of general overhead, maintenance, salaries, professional fees, enforcement costs, and other such expenses that are related to advertising, merchandising, public relations, trade luncheons, publicity, and associated activities shall be paid from the

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291 balance of the Florida Citrus Advertising Trust Fund.

292 Section 8. This act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kathleen Passidomo, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 3, 2022

---

I respectfully request that **Senate Bill #1002**, relating to Florida Citrus, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Danny", is written above a horizontal line.

Senator Danny Burgess  
Florida Senate, District 20



The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

7/10/22  
Meeting Date

Rules  
Committee

513 1002  
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Joyner - FL Citrus Mutual

Phone 863-255-1638

Address 600 W Broadway  
Street

Email mattj@flcitrusmutual.com

Bartow FL 33830  
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

FL Citrus Mutual

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

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

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1012

INTRODUCER: Judiciary Committee and Senators Burgess, and others

SUBJECT: Victims of Crimes

DATE: February 8, 2022

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Stokes  | Jones          | CJ        | <b>Favorable</b>   |
| 2. | Davis   | Cibula         | JU        | <b>Fav/CS</b>      |
| 3. | Stokes  | Phelps         | RC        | <b>Pre-meeting</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1012 amends three statutes that address the rights of victims of crimes.

Section 960.001, F.S., specifies what information must be supplied to victims of crimes. The statute is amended to provide that, in addition to other enumerated information, victims must be informed of their right to employ private counsel. A new provision is added that encourages The Florida Bar to develop a registry of attorneys who are willing to serve on a pro bono basis as advocates for crime victims.

This statute is further amended to clarify that victims who are not incarcerated, or their representatives, may, *upon request*, be informed, be present, and be heard at all stages of criminal and juvenile proceedings, but this occurs when the victim or victim's representative requests to be notified.

Sections 960.0021 and 985.036, F.S., which pertain to a court's responsibility to inform victims of their rights and the rights of a victim in a juvenile proceeding, respectively, are similarly amended. Each statute is revised to add that the victim must be informed "upon request." The bill does not appear to require law enforcement agencies to incur any additional costs. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2022.

## II. Present Situation:

### Victim Rights

Victims of crime in Florida are guaranteed certain rights that are provided in the Florida Constitution as well as in the Florida Statutes. In 2018, Florida voters passed Marsy's Law, an amendment to the Florida Constitution, to expand victim's rights.<sup>1</sup>

#### *Florida Constitution*

Marsy's Law provides that every victim, beginning at the time of his or her victimization, has the right to:

- Due process and to be treated with fairness and respect for the victim's dignity.
- Be free from intimidation, harassment, and abuse.
- Within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused.<sup>2</sup>
- Have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.
- Prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.
- The prompt return of the victim's property when no longer needed as evidence.
- Full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.
- Proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.<sup>3, 4</sup>

Additionally, Marsy's law provides that, upon request, victims have the right to:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding. A victim must also be provided reasonable, accurate, and timely notice of any release or escape of the offender and any proceeding during which a right of the victim is implicated.

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<sup>1</sup> FLA CONST. art. 1, s. 16 (b).

<sup>2</sup> This does not create a special relationship between the crime victim and any law enforcement agency or office absent a special relationship or duty as defined by Florida Law. FLA. CONST. art. 1, s. 16 (b)(3).

<sup>3</sup> FLA CONST. art. 1, s. 16 (b)(10), provides that the state attorney may file in a good faith demand for a speedy trial and the trial court must hold a calendar call, with notice, within 15 days of the filing demand, to schedule a trial to commence on a date at least 5 days but no more than 60 days after the date of the calendar call unless the trial judge enters an order with specific findings of fact justifying a trial date more than 60 days after the calendar call. Additionally, all state-level appeals and collateral attacks on any judgment must be complete within 2 years from the date of appeal in non-capital cases and within 5 years from the date of appeal in capital cases, unless a court enters an order with specific finding as to why the court was unable to comply with this requirement and the circumstances causing the delay. Each year, the chief judge of any district court of appeal or the chief justice of the Supreme Court must report on a case by case basis to the Speaker of the House of Representatives and the President of the Senate all cases where the court entered an order regarding inability to comply with this requirement. The Legislature may enact legislation to implement this requirement.

<sup>4</sup> FLA CONST. art. 1, s. 16 (b).

- Be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- Confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.
- Provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.
- Receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.
- Be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- Be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority must extend the right to be heard to any person harmed by the offender.
- Be informed of clemency and expunction procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have the information considered before a clemency or expunction decision is made; and to be notified of such decision in advance of any release of the offender.<sup>5</sup>

Additionally, victims have a constitutional right to be informed of these rights, and to be informed that they may seek the advice of an attorney with respect to their rights. This information must be made available to the general public and provided to all crime victims in the form of a card or by other means intended to effectively advise the victim of their rights.<sup>6</sup>

### ***Florida Statutes***

Section 960.001, F.S., provides that certain agencies<sup>7</sup> within the criminal justice system must develop and implement guidelines for the use of their agencies, which are consistent with article 1, section 16(b) of the Florida Constitution and achieve the following objectives by providing:

- A victim's rights information card or brochure.<sup>8</sup>
- Information concerning services available to victims of adult and juvenile crimes, including:

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<sup>5</sup> FLA. CONST. art. 1, s. 16 (b)(6).

<sup>6</sup> FLA. CONST. art. 1, s. 16 (b)(11).

<sup>7</sup> Section 960.001(1), F.S., provides that the Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the FDLE, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4), F.S., must develop such guidelines.

<sup>8</sup> Section 960.001(1)(o), F.S., provides that a victim of a crime must be provided with a victim's rights information card or brochure containing essential information concerning the rights of a victim and services available to a victim as required by state law.

- The availability of crime victim compensation, if applicable;
- Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;
- The role of the victim in the criminal or juvenile justice process, including what the victim may expect from the system as well as what the system expects from the victim;
- The stages in the criminal or juvenile justice process which are of significance to the victim and the manner in which information about such stages can be obtained;
- The right of a victim who is not incarcerated, or the victim's representative, to be informed, to be present, and to be heard when relevant, at all crucial stages;
- The right of an incarcerated victim to be informed and submit written statements at all crucial states; and
- The right of a victim to a prompt and timely disposition of the case.<sup>9</sup>
- Information regarding the "victim notification card,"<sup>10</sup> for purposes of notifying a victim or other appropriate contact.
- Consultation with the victim or guardian, or family of the victim.
- Information concerning victim or witness protection.
- Presence of a victim advocate during discovery deposition, or a forensic medical exam. The victim of a sexual offense must be advised of his or her right to have the courtroom cleared of certain persons when testifying.
- Local witness coordination services.
- Notification regarding judicial proceedings, the rights to be present, submit an impact statement, and of any scheduling changes.
- General victim assistance.
- Notification that the victim may request the offender attend a different school, if the victim attends the same school as the offender.
- Information concerning the release or escape of an offender.
- Notification of the rights to request restitution, and return of the victim's property.
- Notification to a victim's employer or creditor that the victim is needed in the prosecution of the case, or has been subjected to financial strain because of the case.
- Victim assistance education and training.
- Crime prevention programs.
- Prohibition of a government official asking or requiring a victim of a sexual offense submit to a polygraph examination or other truth-telling device.<sup>11</sup>

### **The Florida Bar**

The Florida Bar (Bar) is the organization of all lawyers who are licensed by the Supreme Court of Florida to practice law in the state. The Supreme Court of Florida has exclusive and ultimate authority to regulate the admission of persons to the practice of law and the discipline of those

<sup>9</sup> Section 960.001(1)(a)1.-7., F.S.

<sup>10</sup> Section 960.001(1)(b), F.S., provides the notification card must contain at minimum, the name, address, and phone number of the victim, or when appropriate, the next of kin or other designated contact, and any relevant identification or case numbers assigned to the case. The victim, next of kin, or other designated contact must be given an opportunity to complete such card, however he or she may choose not to complete it.

<sup>11</sup> Section 960.001(1)(a)-(u), F.S.

persons. The Court does this through both the Bar, and the Florida Board of Bar Examiners. Neither the Bar nor the Florida Board of Bar Examiners is supported by state tax dollars.<sup>12</sup>

The Bar's core functions are to prosecute unethical lawyers, administer a client protection fund to cover certain financial losses a client may suffer due to misappropriation by a lawyer, administer a substance abuse program, and provide continuing education services for lawyers.<sup>13</sup> The Bar operates a general lawyer referral service, as well as a referral service providing legal advice for low fees in the areas of disability and elder law.<sup>14</sup> The Bar does not appear to maintain a statewide registry of attorneys that provide pro bono legal services.

### **A Court's Responsibility to Advise Victims of Their Rights**

Courts have a responsibility under the law to advise victims of crime about their rights.

Section 960.0021(2), F.S., states that courts may fulfill that responsibility by:

(a) Making an announcement at an arraignment, sentencing, or case-management proceeding: "If you are the victim of a crime with a case pending before this court, you are advised that you have the right:

1. To be informed.
  2. To be present.
  3. To be heard, when relevant, at all crucial stages of criminal proceedings to the extent that these rights do not interfere with the constitutional rights of the accused.
  4. To receive advance notification, when possible, of judicial proceedings and notification of scheduling changes, pursuant to section 960.001, Florida Statutes.
  5. To seek crimes compensation and restitution.
  6. To consult with the state attorney's office in certain felony cases regarding the disposition of the case.
  7. To make an oral or written victim impact statement at the time of sentencing of a defendant.
- For further information regarding additional rights afforded to victims of crime, you may contact the state attorney's office or obtain a listing of your rights from the Clerk of Court."
- (b) Displaying prominently on the courtroom doors posters giving notice of the existence of the rights of victims under Florida law.

### **Rights of Victims in Juvenile Proceedings**

Section 985.036(1), F.S., states that nothing in the Juvenile Justice chapter, ch. 985, F.S., prohibits:

- (a) The victim of the offense;
- (b) The victim's parent or guardian if the victim is a minor;
- (c) The lawful representative of the victim or of the victim's parent or guardian if the victim is a minor; or
- (d) The next of kin if the victim is a homicide victim, from the right to be informed of, to be present during, and to be heard when relevant at, all crucial stages of the proceedings involving the juvenile offender, to the extent that such rights do not interfere with the constitutional rights

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<sup>12</sup> The Florida Bar, *Frequently Asked Questions*, <https://www.floridabar.org/about/faq/> (last visited Jan. 27, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> The Florida Bar, *What We Do*, <https://www.floridabar.org/about/faq/what-we-do/#Findingyoulawyer> (last visited Jan. 27, 2022).

of the juvenile offender. A person enumerated in this section may not reveal to any outside party any confidential information obtained under this subsection regarding a case involving a juvenile offense, except as is reasonably necessary to pursue legal remedies.

### **III. Effect of Proposed Changes:**

#### **Guidelines for the Fair Treatment of Victims and Witnesses (Section 1)**

This bill amends three subparagraphs contained in s. 960.001, F.S., that address information that victims of crime must be given.

##### ***The Right to Employ Private Counsel***

A new subparagraph 8. is added to provide that, in addition to other specified information, victims must be informed of their right to employ private counsel consistent with the constitutional rights of the accused. Additionally, this bill encourages The Florida Bar to develop a registry of attorneys who are willing to serve on a pro bono basis as advocates for crime victims.

##### ***Victims Who Are Not Incarcerated***

Section 960.001(1)(a)5., F.S., is amended to add and delete language pertaining to a victim's rights. That statute, as amended, states that a victim, who is not incarcerated, and the victim's parents, guardian if a minor, or lawful representative, and the next of kin of a homicide victim have a right "upon request" to be informed, to be present, and to be heard at all stages of a criminal or juvenile proceeding, as provided by article 1, section 16(b) of the Florida Constitution. Language is deleted from the existing statute that removes the conditions "when relevant," at a "crucial" stage, and "to the extent that this right does not interfere with constitutional right of the accused."

##### ***Victims Who Are Incarcerated***

In a similar manner, s. 960.001(1)(a)6., F.S., is also amended to add the phrase "*upon request*" such that incarcerated victims, have the right "upon request" to be informed and to submit written statements at all stages of the criminal proceedings, parole proceedings, or juvenile proceedings. The amended language no longer requires that the stage be a "crucial" stage for the incarcerated victim to be informed and submit statements at proceedings.

#### **The Responsibility of Courts to Advise Victims of Their Rights (Section 2) and Rights of Victims in Juvenile Proceedings (Section 3)**

Two additional statutes that address victims' rights are amended to reflect the changes made above to s. 96.001(1)(a), F.S.

Sections 960.002(2) and 985.036(1), F.S., are very similarly amended to provide that a victim, *upon request*, may be heard at all stages of criminal and juvenile proceedings.

This bill is effective July 1, 2022.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Florida Constitution has required a crime victim to be notified of his or her right to retain private counsel since the amendment to article I, section 16 went into effect on January 8, 2019. Since the bill codifies an existing constitutional requirement, law enforcement agencies already providing such information should not incur any additional costs in updating victim information materials.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



**VIII. Statutes Affected:**

This bill substantially amends section 960.001, Florida Statutes.

**IX. Additional Information:**

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

**CS by Judiciary on January 31, 2022:**

Several provisions are added to the committee substitute which were not in the underlying bill. In general terms, these provisions state that:

- Victims, or their representatives, may receive notice and provide input, but only when they request to be notified.
- Their input is not limited to being “relevant” for them to be informed, present, or heard.
- The proceedings do not need to be deemed “crucial” for the victim or victim’s representative to be involved.

Additionally, language is deleted which states that the victim’s rights may be exercised to the extent that they do not interfere with the accused’s constitutional rights.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Burgess) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 135

and insert:

Section 4. Effective October 1, 2022, section 960.0023,  
Florida Statutes, is created to read:

960.0023 Duty of candor to an alleged victim.—A person who  
has been arrested or charged with a crime or a delinquent act,  
as well as the person's attorney or agent, who contacts the  
alleged victim to obtain information relating to the alleged  
victim or the crime or delinquent act may not misrepresent his



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or her identity or the identity of the person he or she is  
representing or on whose behalf he or she is working. A person  
who violates this section commits a misdemeanor of the second  
degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Except as otherwise expressly provided in this  
act, this act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete lines 13 - 14

and insert:

provisions to changes made by the act; creating s.  
960.0023, F.S.; prohibiting certain persons from  
misrepresenting their identity when contacting an  
alleged victim of a crime or a delinquent act to  
obtain information relating to the alleged victim or  
the crime or delinquent act; providing criminal  
penalties; providing effective dates.

By the Committee on Judiciary; and Senators Burgess, Book, and Perry

590-02531-22

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A bill to be entitled

An act relating to victims of crimes; amending s. 960.001, F.S.; requiring law enforcement personnel to ensure that crime victims are given information about specified rights, upon request, at all stages of criminal, parole, or juvenile proceedings; requiring law enforcement personnel to ensure that crime victims are given information about their right to employ private counsel; encouraging The Florida Bar to develop a registry of attorneys willing to serve on a pro bono basis as advocates for crime victims; amending ss. 960.0021 and 985.036, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 960.001, Florida Statutes, is amended to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.—

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent

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with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(a) *Information concerning services available to victims of adult and juvenile crime.*—As provided in s. 27.0065, state attorneys and public defenders shall gather information regarding the following services in the geographic boundaries of their respective circuits and shall provide such information to each law enforcement agency with jurisdiction within such geographic boundaries. Law enforcement personnel shall ensure, through distribution of a victim's rights information card or brochure at the crime scene, during the criminal investigation, and in any other appropriate manner, that victims are given, as a matter of course at the earliest possible time, information about:

1. The availability of crime victim compensation, if applicable;

2. Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;

3. The role of the victim in the criminal or juvenile justice process, including what the victim may expect from the system as well as what the system expects from the victim;

4. The stages in the criminal or juvenile justice process which are of significance to the victim and the manner in which information about such stages can be obtained;

5. The right of a victim, who is not incarcerated, including the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the

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victim's parent or guardian if the victim is a minor, and the next of kin of a homicide victim, upon request, to be informed, to be present, and to be heard ~~when relevant~~, at all ~~crucial~~ stages of a criminal or juvenile proceeding, ~~to the extent that this right does not interfere with constitutional rights of the accused~~, as provided by s. 16(b), Art. I of the State Constitution;

6. In the case of incarcerated victims, the right, upon request, to be informed and to submit written statements at all ~~crucial~~ stages of the criminal proceedings, parole proceedings, or juvenile proceedings; ~~and~~

7. The right of a victim to a prompt and timely disposition of the case in order to minimize the period during which the victim must endure the responsibilities and stress involved; and

8. The right of a victim to employ private counsel. The Florida Bar is encouraged to develop a registry of attorneys who are willing to serve on a pro bono basis as advocates for crime victims ~~to the extent that this right does not interfere with the constitutional rights of the accused.~~

Section 2. Subsection (2) of section 960.0021, Florida Statutes, is amended to read:

960.0021 Legislative intent; advisement to victims.—

(2) The courts may fulfill their obligation to advise crime victims by:

(a) Making the following announcement at any arraignment, sentencing, or case-management proceeding:

"If you are the victim of a crime with a case pending before this court, you are advised that you have the

590-02531-22

20221012c1

right, upon request:

1. To be informed.

2. To be present.

3. To be heard, ~~when relevant~~, at all ~~crucial~~ stages of criminal proceedings ~~to the extent that these rights do not interfere with the constitutional rights of the accused.~~

4. To receive advance notification, when possible, of judicial proceedings and notification of scheduling changes, pursuant to section 960.001, Florida Statutes.

5. To seek crimes compensation and restitution.

6. To consult with the state attorney's office in certain felony cases regarding the disposition of the case.

7. To make an oral or written victim impact statement at the time of sentencing of a defendant.

For further information regarding additional rights afforded to victims of crime, you may contact the state attorney's office or obtain a listing of your rights from the Clerk of Court."

; or

(b) Displaying prominently on the courtroom doors posters giving notification of the existence and general provisions of this chapter. The Department of Legal Affairs shall provide the courts with the posters specified by this paragraph.

Section 3. Subsection (1) of section 985.036, Florida Statutes, is amended to read:

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20221012c1

117 985.036 Rights of victims; juvenile proceedings.—  
118 (1) Nothing in this chapter prohibits:  
119 (a) The victim of the offense;  
120 (b) The victim's parent or guardian if the victim is a  
121 minor;  
122 (c) The lawful representative of the victim or of the  
123 victim's parent or guardian if the victim is a minor; or  
124 (d) The next of kin if the victim is a homicide victim,  
125  
126 from the right, upon request, to be informed of, to be present  
127 during, and to be heard ~~when relevant at, all crucial~~ stages of  
128 the proceedings involving the juvenile offender, ~~to the extent~~  
129 ~~that such rights do not interfere with the constitutional rights~~  
130 ~~of the juvenile offender~~. A person enumerated in this section  
131 may not reveal to any outside party any confidential information  
132 obtained under this subsection regarding a case involving a  
133 juvenile offense, except as is reasonably necessary to pursue  
134 legal remedies.  
135 Section 4. This act shall take effect July 1, 2022.

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB 1012

Bill Number or Topic

Meeting Date

2/10/22

Committee

Senate Rules

Ju. Rc.

02861

Amendment Barcode (if applicable)

Name

Jack Campbell

Phone

850 606 6012

Address

State Attorney & Florida Prosecution Attorney, Associate

Email

CampbellJ@leoncount,fl.gov

Street

City

State

Zip

Speaking:



For



Against



Information

**OR**

Waive Speaking:



In Support



Against

**PLEASE CHECK ONE OF THE FOLLOWING:**



I am appearing without  
compensation or sponsorship.



I am a registered lobbyist,  
representing:



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

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

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1058

INTRODUCER: Senator Hutson

SUBJECT: Property Insurer Reimbursements

DATE: February 8, 2022

REVISED: \_\_\_\_\_

| ANALYST           | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------------|----------------|-----------|------------------|
| 1. <u>Arnold</u>  | <u>Knudson</u> | <u>BI</u> | <b>Favorable</b> |
| 2. <u>Hackett</u> | <u>Ryon</u>    | <u>CA</u> | <b>Favorable</b> |
| 3. <u>Arnold</u>  | <u>Phelps</u>  | <u>RC</u> | <b>Favorable</b> |

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## **I. Summary:**

SB 1058 authorizes the State Board of Administration (SBA) to provide Florida Hurricane Catastrophe Fund (Cat Fund) coverage to authorized insurers or Citizens Property Insurance Corporation (Citizens) for the policies of unsound insurers that Citizens or the authorized insurer assumes or otherwise provides coverage. The authorized insurer or Citizens may obtain Cat Fund coverage for such policies either through the authorized insurer's or Citizens' reimbursement contract with the Cat Fund or by accepting an assignment of the unsound insurer's contract with the Fund.

The bill defines "unsound insurer" to mean an insurer determined by the Office of Insurance Regulation to be in unsound condition as defined s. 624.80(2), F.S., or placed in receivership under ch. 631, F.S.

Under current law, these options for obtaining Cat Fund coverage are only available to Citizens, and only apply to the policies of liquidated insurers.

The bill takes effect July 1, 2022.

## **II. Present Situation:**

### **Insurer Insolvency**

Federal law specifies that insurance companies cannot file for bankruptcy and are instead subject to state laws regarding receivership.<sup>1</sup> Insurers are either "rehabilitated" or "liquidated" by the

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<sup>1</sup> The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).



state. Typically, insurers are put into liquidation when the company is or is about to become insolvent;<sup>2</sup> whereas, insurers are placed in rehabilitation<sup>3</sup> for numerous reasons, one of which is that the insurer is impaired or failed to comply with an order of the Office of Insurance Regulation (OIR) to address an impairment of capital or surplus or both. The goal of rehabilitation is to return to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the company's debts and outstanding insurance claims.

In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies. This process involves the initiation of a delinquency proceeding<sup>4</sup> and the placement of an insurer under the control of the DFS as the receiver. DFS as receiver has many responsibilities related to outstanding debts and insurance claims, which include collecting all debts and money due to the insurer for the good of policyholders and creditors alike, evaluating and paying claims with available assets, and assisting in the transition of policyholders to other insurance coverage.<sup>5</sup>

### **Florida Hurricane Catastrophe Fund**

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt<sup>6</sup> trust fund created by the Legislature in 1993<sup>7</sup> as a form of mandatory reinsurance for residential property losses. The FHCF is administered by the State Board of Administration (SBA)<sup>8</sup> and reimburses property insurers for a selected percentage (45, 75, or 90 percent)<sup>9</sup> of hurricane losses to residential property above the insurer's retention (deductible). As a condition of doing business in Florida, residential property insurers are required to enter into reimbursement contracts with FHCF.<sup>10</sup> The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

### ***FHCF Mandatory Coverage***

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.<sup>11</sup> The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.<sup>12</sup> Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share

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<sup>2</sup> Section 631.061, F.S.

<sup>3</sup> Section 631.051, F.S.

<sup>4</sup> Section 631.031, F.S.

<sup>5</sup> Florida Department of Financial Services, *Overview of Liquidation under Chapter 631, Florida Statutes*, <https://www.myfloridacfo.com/division/receiver/guide-to-the-receivership-process/liquidationsummary> (last visited December 29, 2021).

<sup>6</sup> Section 215.555(1)(f), F.S.

<sup>7</sup> Chapter 93-409, L.O.F.

<sup>8</sup> Section 215.555(3), F.S.

<sup>9</sup> Section 215.555(2)(e), F.S.

<sup>10</sup> Section 215.555(4)(a), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 215.555(4)(c)1., F.S.

of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent<sup>13</sup> of the reimbursed losses for loss adjustment expenses.<sup>14</sup>

### ***FHCF Premiums***

The FHCF must charge insurers the actuarially indicated premium<sup>15</sup> for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.<sup>16</sup> The actuarially indicated premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. The cost of FHCF coverage is generally lower than the cost of private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.<sup>17</sup>

### ***Assignment of Liquidated Insurer's FHCF Coverage***

Citizens Property Insurance Corporation may assume or otherwise provide coverage for policies of residential property insurers placed in liquidation under ch. 631, F.S. Citizens Property Insurance Corporation may subsequently obtain FHCF coverage for the newly assumed policies either under its existing FHCF contract or by way of assignment of the liquidated insurer's FHCF contract, as mutually agreed upon between Citizens Property Insurance Corporation and SBA.<sup>18</sup> In the case of an assignment, FHCF applies its contract to the newly assigned policies and treats Citizens Property Insurance Corporation as though it were the liquidated insurer for the remaining term of the contract.<sup>19</sup>

Florida law is otherwise silent with respect to the assignability of the liquidated insurer's FHCF contract to an authorized insurer rather than to Citizens Property Insurance Corporation. The absence of legislative authority for SBA to approve the assignment of a liquidated insurer's FHCF contract to an authorized insurer removes one regulatory tool for reversing the increasing assumption of policies by Citizens Property Insurance Corporation.

### **Citizens Property Insurance Corporation (Citizens)**

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the

---

<sup>13</sup> Section 215.555(4)(b), F.S.

<sup>14</sup> Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

<sup>15</sup> Section 215.555(2)(a), F.S.

<sup>16</sup> See State Board of Administration of Florida, *Florida Commission on Hurricane Loss Methodology*, <https://www.sbafla.com/method/> (last visited December 29, 2021).

<sup>17</sup> State Board of Administration of Florida, *Florida Hurricane Catastrophe Fund, 2020 Annual Report*, [https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20210614\\_2020\\_FHCFAnnualReport.pdf?ver=2021-06-14-123243-403](https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20210614_2020_FHCFAnnualReport.pdf?ver=2021-06-14-123243-403) (last visited December 29, 2021).

<sup>18</sup> Section 251.555(5)(e), F.S.

<sup>19</sup> *Id.*

voluntary admitted market.<sup>20</sup> Citizens is not a private insurance company.<sup>21</sup> Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight-member Board of Governors<sup>22</sup> that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board. Citizens is subject to regulation by the OIR.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>23</sup> Assets may not be commingled or used to fund losses in another account.<sup>24</sup>

- **The Personal Lines Account (PLA)** offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.
- **The Commercial Lines Account (CLA)** offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes nonresidential commercial policies covering business properties.
- **The Coastal Account** offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind-only policies) and may offer multiperil policies.<sup>25</sup>

### ***Citizens Insurance Rates***

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351, F.S., are subject to the rate standards for property and casualty insurance in s. 627.062, F.S.<sup>26</sup> From 2007 until 2020, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose

<sup>20</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>21</sup> Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the OIR.

<sup>22</sup> The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.

<sup>23</sup> The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>24</sup> Section 627.351(6)(b)2b., F.S.

<sup>25</sup> In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

<sup>26</sup> Among the factors OIR considers when reviewing a rate filing is the degree of competition among the insurers for the risk insured, per s. 627.062(3)(b), F.S.

annual rate increases up to an actuarially sound level. The Legislature subsequently increased the glide path in 2021. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed a 10 percent cap above the previous year for any individual policyholder, adjusted for coverage changes and surcharges, which increases by 1 percent annually until the cap reaches 15 percent in 2026.<sup>27</sup>

### ***Citizens Eligibility***

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 20 percent or more.<sup>28</sup> In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

Current Citizens policyholders cannot renew a Citizens insurance policy if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.<sup>29</sup>

The Legislature established the Citizens policyholder eligibility clearinghouse program in 2013.<sup>30</sup> Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 20 percent of Citizens' rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage equal to or less than Citizens' rate is ineligible for coverage with Citizens.

### ***Citizens Options to Maintain FHCF Coverage for Liquidated Insurers' Policies***

Citizens may assume or otherwise provide coverage for policies of residential property insurers placed in liquidation under ch. 631, F.S. Citizens may subsequently obtain FHCF coverage for the newly assumed policies either under its existing FHCF contract or by way of assignment of the liquidated insurer's FHCF contract, as mutually agreed upon between Citizens and SBA.<sup>31</sup> In the case of an assignment, FHCF applies its contract to the newly assigned policies and treats Citizens as though it were the liquidated insurer for the remaining term of the contract.<sup>32</sup>

For FHCF coverage purposes, policies assumed under Citizens' existing FHCF contract are treated as having been in effect since June 30 of that calendar year.<sup>33</sup> However, for policies

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<sup>27</sup> Section 627.351(6)(n)5., F.S.

<sup>28</sup> Section 627.351(6)(c)5., F.S.

<sup>29</sup> Section 627.351(6)(c)5., F.S.

<sup>30</sup> Section 10, ch. 2013-60, L.O.F.

<sup>31</sup> Section 251.555(5)(e), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

assigned to Citizens, Citizens may not obtain FHCF under its existing FHCF but rather accept assignment of the liquidated insurer's FHCF contract.<sup>34</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 215.555, F.S., governing the FHCF, to define “unsound insurer” to mean an insurer determined by OIR to be in unsound condition as defined in s. 624.80(2), F.S., or placed in receivership under ch. 631, F.S.,

Section 624.80(2), F.S., defines “unsound condition” to mean that OIR has determined that one of more of the following conditions exist with respect to the insurer:

- The insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law;
- The insurer continues to write new business when it has not maintained the required surplus or capital;
- The insurer attempts to dissolve or liquidate without first having made provisions, satisfactory to OIR, for liabilities arising from insurance policies issued by the insurer; or
- The meets one or more of the grounds in s. 631.051, F.S., related to rehabilitation, for the appointment of DFS as receiver.

Chapter 631 governs receivership for purposes of rehabilitation and liquidation.

The bill authorizes the SBA to provide Cat Fund coverage to authorized insurers or Citizens for the policies of unsound insurers that Citizens or the authorized insurer assumes or otherwise provides coverage, provided the conditions are mutually agreed upon between the authorized insurer or Citizens and SBA. The authorized insurer or Citizens may seek to obtain FHCF coverage for the transferred policies under its existing FHCF contract or by accepting an assignment of the unsound insurer's FHCF contract.

The bill clarifies the authorized insurer or Citizens may only accept an assignment of the unsound insurer's FHCF contract if a covered event occurs before the policies' effective transfer date.

The bill clarifies FHCF's right to receive premium due under the unsound insurer's FHCF contract.

**Section 2** provides an effective date of July 1, 2022.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>34</sup> *Id.*

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 215.555 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

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By Senator Hutson

7-00836B-22

20221058\_\_

A bill to be entitled

An act relating to property insurer reimbursements; amending s. 215.555, F.S.; defining the term "unsound insurer"; revising requirements for coverage under the Florida Hurricane Catastrophe Fund of certain policies assumed by authorized insurers or the Citizens Property Insurance Corporation; providing construction; providing an effective date.

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

Section 1. Paragraph (e) of subsection (5) of section 215.555, Florida Statutes, is amended, and paragraph (p) is added to subsection (2) of that section, to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(p) "Unsound insurer" means an insurer determined by the Office of Insurance Regulation to be in unsound condition as defined in s. 624.80(2) or an insurer placed in receivership under chapter 631.

(5) REIMBURSEMENT PREMIUMS.—

(e) 1. If an authorized insurer or the Citizens Property Insurance Corporation assumes or otherwise provides coverage for policies of an unsound insurer an insurer placed in liquidation under chapter 631 pursuant to s. 627.351(6), the authorized insurer or the Citizens Property Insurance Corporation may, pursuant to conditions mutually agreed to between the authorized insurer or the Citizens Property Insurance Corporation and the State Board of Administration, seek to obtain coverage for such

7-00836B-22

20221058\_\_

policies under its contract with the fund or accept an assignment of the ~~unsound liquidated~~ insurer's contract with the fund. However, if a covered event has occurred before the effective date of the transfer of the policies, the authorized insurer or the Citizens Property Insurance Corporation may only obtain coverage for such policies through an assignment as provided in subparagraph 3.

2. If an authorized insurer or the Citizens Property Insurance Corporation assumes policies from an unsound insurer and elects to cover these policies under its the corporation's contract with the fund, it shall notify the board of its insured values with respect to such policies within a specified time mutually agreed to between the authorized insurer or the Citizens Property Insurance Corporation and the board, after such assumption or other coverage transaction, and the fund shall treat such policies as having been in effect as of June 30 of that year.

3. If an authorized insurer or the Citizens Property Insurance Corporation accepts in the event of an assignment of an unsound insurer's contract, the fund shall apply the unsound insurer's that contract to such policies and treat the authorized insurer or the Citizens Property Insurance Corporation as if it the corporation were the unsound liquidated insurer for the remaining term of the contract, with and the corporation shall have all rights and duties of the unsound liquidated insurer beginning on the date it provides coverage for such policies. This subparagraph may not be construed to limit the fund's right to receive the premium due under the unsound insurer's contract, but the corporation is not subject



7-00836B-22

20221058\_\_

59 ~~to any preexisting rights, liabilities, or duties of the~~  
60 ~~liquidated insurer. The assignment, including any unresolved~~  
61 ~~issues between the liquidated insurer and Citizens Property~~  
62 ~~Insurance Corporation under the contract, shall be provided for~~  
63 ~~in the liquidation order or otherwise determined by the court.~~  
64 ~~However, if a covered event occurs before the effective date of~~  
65 ~~the assignment, the corporation may not obtain coverage for such~~  
66 ~~policies under its contract with the fund and shall accept an~~  
67 ~~assignment of the liquidated insurer's contract as provided in~~  
68 ~~this paragraph.~~

69 Section 2. This act shall take effect July 1, 2022.

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

2/10/22  
Meeting Date

RULES  
Committee

SB 1058  
Bill Number or Topic

Amendment Barcode (if applicable)

Name TASHA CARTER, Insurance Consumer Advocate Phone 850-413-2868

Address 200 E. GAINES Street Email TASHA.CARTER@myfloridacfo.com

Tallahassee FL 32399  
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

OFFICE of the INSURANCE  
CONSUMER ADVOCATE

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

2/10

Meeting Date

SB 1058

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name Grant Phillips

Phone

Address

Street

City

State

Zip

Email

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

Office of  
Insurance Regulation

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

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

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

S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

2/10

Meeting Date

Rules

Committee

1058

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Austin Stowers

Phone

850 413 5939

Address

200 E Gaines

Email

austin.stowers@myfloridacfo.com

Street

Tallahassee

FL

32399

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

☐

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

CFO : State Fire Marshal Jimmy Patronis

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

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1062

INTRODUCER: Commerce and Tourism Committee; Judiciary Committee and Senator Bradley

SUBJECT: Service of Process

DATE: February 8, 2022

REVISED: \_\_\_\_\_

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Bond     | Cibula         | JU        | <b>Fav/CS</b>    |
| 2. McMillan | McKay          | CM        | <b>Fav/CS</b>    |
| 3. Bond     | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1062 amends laws governing service of process. The term “service of process” refers to the manner of delivery of legal notice to an individual or entity which provides notice of a pending legal action. The bill:

- Details and standardizes the manner and priority of forms of service of process as related to different forms of business entities as appropriate to the form and structure of the entities;
- Prioritizes service of process on the registered agent of an entity;
- Clarifies procedures for substituted service of process by delivery to the Secretary of State;
- Creates the authority of a trial court to allow any effective alternative means of service of process where an entity cannot be served with process by conventional means;
- Creates a framework for service of process on an individual or entity in a foreign country, to include any form of process recognized under that country’s laws;
- Creates procedures for service of process for removal of an unknown party in possession of rented real property;
- Provides that service of a medical negligence pre-suit notice starts to toll the statute of limitations from the date of mailing rather than the date of receipt, and broadens the forms of such delivery to allow commercial delivery services or use of a certified process server;
- Broadens statutes on service of process by registered or certified mail to also allow delivery by a commercial delivery service; and
- Allows the Department of State to accept substituted service of process by electronic means.

This bill does not appear to have a fiscal impact on state or local governments.

The section of the bill regarding notice before filing an action for medical malpractice takes effect upon becoming law, the remainder of the bill takes effect January 2, 2023.

## **II. Present Situation:**

A fundamental concept of due process is that a person must be given fair notice of the initiation of an action against them. Delivery of that notice is referred to as “service of process.” Adequate service of process is also required to summon a witness for testimony or for production of evidence. Centuries ago, service of process was only trusted to the county sheriff. Modern concepts of due process required for adequate service of process recognize that there are numerous means by which a person or entity may be fairly appraised of a lawsuit or a requirement to produce evidence.

The traditional and best form of service of process on a competent adult is by personal delivery to that individual, but that is not always possible. Individuals may be difficult to find, whether intentionally or not. Individuals may be incompetent, whether medically or by youth. Procedures need to be established for determining how to serve process on an entity in a manner likely to have it noticed by management for a timely response. A large body of law has been devoted to the allowable methods for service of process.

The Secretary of State is involved in many aspects of service of process. The Secretary is head of the Department of State, which handles the administrative duties of the Secretary. The Division of Corporations, under the Department of State, accepts business entity registrations and renewals, and maintains a publicly-accessible record of every entity, listing a registered agent and the names of the related top-level individuals of the entity. Every current entity must appoint a registered agent, a person within the state who is authorized by the entity to accept service of process directed to the entity. In some instances, substituted service of process may be made on the Secretary of State.

## **III. Effect of Proposed Changes:**

### **Service of Process on a General Partnership (Section 2)**

A general partnership is a form of business where two or more individuals jointly engage in an enterprise. The assets of the partnership are subject to creditor claims, and every partner is jointly and severally liable for the debts of the partnership. Currently, service on any partner, or on a registered agent if one is named, is deemed service on the partnership, making the assets of the partnership available to the plaintiff. Individual partners are personally liable for partnership debts if partnership assets are exhausted, but must be served with process as an individual in order for his or her non-partnership assets to be subject to creditor claims.<sup>1</sup> A general partnership may, but is not required to, register with the Department of State and name a registered agent for

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<sup>1</sup> Sections 48.061(1), 620.8306, and 620.8307, F.S.

service of process.<sup>2</sup> A general partnership may designate an employee to accept service of process during regular business hours.<sup>3</sup>

The bill provides that, after one attempt at service of process on any partner, registered agent, or designated employee, a partnership may be served by delivery of process to a person in charge of the partnership during regular business hours.

### **Service of Process on a Limited Liability Partnership (Section 2)**

A partnership may elect to be a limited liability partnership by registration with the Secretary of State. The assets of the partnership are subject to creditor claims, but the non-partnership assets of all of the individual partners are not subject to creditor claims.<sup>4</sup> Current statutes do not specifically address service of process on a limited liability partnership, current law on general partnerships therefore applies.

The bill specifies the manner of service of process on a limited liability partnership. Process must first be attempted on the registered agent. If service on the registered agent fails, process may be made on any partner. If no partner is available during regular business hours, any partner may designate an employee to accept service of process. If service on a partner or designated employee fails, process may be served on the person in charge of the partnership during regular business hours. If all of these fail, process may be served upon the Secretary of State or by any other method approved by court order.

### **Service of Process on a Limited Partnership (Sections 2, 30, 31, 32, 33, 34, 35)**

A limited partnership has two classes of partners, limited partners and general partners. The limited partnership must have at least one of each. A limited partnership formed in the state or doing business in the state must register with the Secretary of State. The assets of the limited partnership are subject to creditor claims, as are the assets of a general partner, but the non-partnership assets of any limited partner are not subject to creditor claims.<sup>5</sup> Service of process on a limited partnership is by service on the registered agent. If service cannot be made against the registered agent, substituted service may be made on the Secretary of State.<sup>6</sup>

The bill provides that service of process on a domestic limited partnership must first be attempted by delivery to the registered agent. If that service fails, service may be on any general partner of the limited partnership. If that fails, service may be made on the Secretary of State or by any other method approved by court order.

The bill also provides that a notice or demand required to be delivered to the limited partnership which is not service of process may be delivered to any general partner, the registered agent, or to any other address that is the principal place of business in this state.

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<sup>2</sup> Section 620.8105, F.S.

<sup>3</sup> Section 48.061(1), F.S. This designation is internal to the partnership.

<sup>4</sup> Section 620.8306(3), F.S.

<sup>5</sup> Section 620.1404(1), F.S. *See also* s. 620.1303, F.S.

<sup>6</sup> Section 620.1117, F.S.

**Service of Process on a Limited Liability Company (Sections 3, 19, 21 and 22)**

A limited liability company is a form of business entity that is formed by enactment of an operating agreement and registration with the Secretary of State. Like a corporation, individual investors are not liable for entity debts. Service of process on a limited liability company may be on the registered agent. If service on the registered agent fails, process may be served on any member of a member-managed limited liability company or any manager of a manager-managed limited liability company. If these fail, substituted service may be on the Secretary of State.<sup>7</sup>

The bill keeps the registered agent first and the Secretary of State as a last resort, and provides that any other person listed publicly in the company's latest annual report, as most recently amended, as an additional alternative to any manager of a manager-managed limited liability company or any member of a member-managed limited liability company. As a last resort, the bill adds any other method approved by court order as an alternative to service on the Secretary of State.

To cancel its certificate of authority to transact business in the state, a foreign limited liability company must in part furnish the Secretary of State with an address that can be used should the company be served with substitute process through the Secretary of State,<sup>8</sup> and must commit to keeping the address on file current.<sup>9</sup> The bill adds a requirement to furnish and update, as necessary, an email address.

Business entities may have authority to convert from one form of entity to another. Where the converting entity is a registered limited liability company and the converted entity is any form of foreign entity that is not registered in Florida, the entity must give the Secretary of State a mailing address that can be used should the entity be served with substitute process through the Secretary of State.<sup>10</sup> The bill adds a requirement to furnish an email address with the mailing address.

**Service of Process on a Corporation (Sections 5, 23, 24, 25, 26, 27, 28, and 29)**

A corporation is a form of business entity in which investors purchase shares of stock in the corporation and vote for a board of directors to manage the entity. Shareholders are generally not liable for the debts of the corporation. Service of process on a corporation is by delivery to the president, vice president, or any other head of the corporation. In the absence of a president or other head of the corporation, service may be made on the cashier, treasurer, secretary, or general manager. In the absence of any of the foregoing, service may be made on any director of the corporation. In the absence of any of the foregoing, service may be made on any officer or business agent residing in the state. If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state. As an alternative to all of the foregoing, process may be served on the registered agent.<sup>11</sup> Also as an

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<sup>7</sup> Section 605.0117, F.S.

<sup>8</sup> Section 605.0910(1)(f), F.S.

<sup>9</sup> Section 605.0910(1)(g), F.S.

<sup>10</sup> Section 605.1045(2)(f), F.S.

<sup>11</sup> Section 48.081, F.S. This section does not apply to a corporation that is an insurance company. Service on an insurance company is not affected by this bill.



alternative, should all of the foregoing fail, service may be by delivery to any employee of the corporation at the principal place of business or any employee of the registered agent.

The bill requires that the first attempt at service of process be delivery to the registered agent. If service on the registered agent fails, service may be by delivery to the chair of the board of directors, the president, any vice president, the secretary, the treasurer, or any other person listed on the most recent corporate filing with the Secretary of State. If service on these fail, service may be by substituted service on the Secretary of State or by any other method approved by court order. The bill repeals the duty to go down the hierarchy of officers and repeals the “any employee” option.

To cancel its certificate of authority to transact business in the state, a foreign corporation must in part furnish the Secretary of State with an address that can be used should the corporation be served with substitute process through the Secretary of State,<sup>12</sup> and must commit to update the mailing address in the future.<sup>13</sup> The bill adds a requirement to furnish an email address as a part of the withdrawal, and requires a corporation to also commit to future updates to the email address.

### **Alternative Use of Commercial Delivery Services (Sections 4, 11, and 17)**

Various forms of service of process require that a copy of the papers served also be furnished to the person affected by mailing through the United States Postal Service. In the following statutes, the bill adds that delivery by a commercial firm regularly engaged in the business of document or package delivery is an alternative to U.S. postal delivery:

- Service of process on agents of nonresidents (natural persons or partnerships) doing business in the state;<sup>14</sup>
- Substituted service of process by service on the Secretary of State; and<sup>15</sup>
- Presuit service of a notice of intent to file a medical negligence action.<sup>16</sup>

### **Offices of Registered Agents (Section 6)**

A registered agent for a corporation is required to be open daily from 10 a.m. to noon, except for weekends and holidays, and must post a sign listing the corporations that the registered agent serves.<sup>17</sup> No statute governs operating hours or signs of a registered agent for other forms of business entity.

The bill adds all forms of a business entity to the statute governing registered agents, allows a registered agent to be open at times in addition to the 10 a.m. to noon requirement, repeals the sign requirement, specifies that service on a registered agent may be by delivery to any employee of the registered agent, and codifies the commonly understood duty of a registered agent to

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<sup>12</sup> Section 607.1520(1)(f), F.S. (for-profit corporations); s. 617.1520(2)(d), F.S. (not-for-profit corporations).

<sup>13</sup> Section 607.1520(1)(g), F.S. (for-profit corporations); s. 617.1520(2)(e), F.S. (not-for-profit corporations).

<sup>14</sup> Section 48.071, F.S.

<sup>15</sup> Section 48.161, F.S.

<sup>16</sup> Section 766.106(2)(a), F.S.

<sup>17</sup> Section 48.091, F.S.

promptly forward the process and any related papers to the responsible person in the business entity.

### **Service on a Dissolved Entity (Section 7)**

Service of process on a dissolved corporation is the same as service of process on an active corporation.<sup>18</sup> The statutes do not address service of process on other forms of a business entity after dissolution of the entity.

The bill confirms that service on a dissolved corporation is the same as an active corporation as such is amended by the bill. Additionally, the bill adds that service on a dissolved corporation may also be delivered to an existing court-appointed trustee, custodian, or receiver, and adds that the court may appoint a trustee, custodian, or receiver to receive process on behalf of a dissolved domestic for-profit corporation. The bill provides that service on a dissolved limited liability company is the same as an active limited liability company. Process may be delivered to a court-appointed liquidator, trustee, or receiver of a dissolved limited liability company, and the court may appoint a trustee, custodian, or receiver to receive process on behalf of a dissolved domestic limited liability company. Finally, the bill adds that service on a dissolved limited partnership is the same as service on an active limited partnership.

### **Court-Ordered Alternative Means of Service of Process (Section 8)**

Current law on service of process specifies the manner of service of process for various entities and situations, but gives no flexibility for unique circumstances. The bill provides flexibility where, despite due diligence, the party has been unable to personally serve process on any of the following forms of business entity:

- A domestic or foreign corporation;
- A domestic or foreign general partnership, including a limited liability partnership;
- A domestic or foreign limited partnership, including a limited liability limited partnership; or
- A domestic or foreign limited liability company.

In situations where the entity cannot otherwise be served, the court, upon motion and a showing of such inability, may authorize service in any other manner that the party seeking to effectuate service shows will be reasonably effective to give the entity actual notice of the suit. Such other manners of service may include service electronically by email or other technology by any person authorized to serve process or by an attorney. The court may authorize other methods of service consistent with the principles of due process. Additionally, in suits involving a breach of contract, the court may authorize the parties to effectuate service in the manner provided in the contractual notice provision of the contract.

### **Service on Public Agencies and Officers (Section 9)**

Current law provides that process against any municipal corporation, agency, board, or commission, department, or subdivision of the state or any county which has a governing board, council, or commission or which is a body corporate must be served:

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<sup>18</sup> Section 48.101, F.S.

- On the president, mayor, chair, or other head thereof; and in his or her absence;
- On the vice president, vice mayor, or vice chair, or in the absence of all of the above;
- On any member of the governing board, council, or commission.<sup>19</sup>

The bill provides that process against any municipal corporation, agency, board, or commission, department, or subdivision of the state or any county which has a governing board, council, or commission or which is a body corporate must be served on the registered agent. However, if the entity does not have a registered agent, or if the registered agent cannot be served after one good faith attempt, the entity must be served:

- On the president, mayor, chair, or other head thereof, and in the absence of the aforementioned;
- On the vice president, vice mayor, or vice chair, and in the absence of the aforementioned;
- On any member of the governing board, council, or commission, the manager of the governmental entity, of an in-house attorney for the governmental entity, and in the absence of the aforementioned;
- On any employee of the governmental entity at the main office of the governmental entity.

### **Procedures for Substituted Service through the Secretary of State (Sections 1 and 11)**

Several statutes on service of process refer to substituted service of process by service on the Secretary of State. This is generally only available where attempts at personal service have failed. Substituted service on the Secretary of State is effectuated by either hand delivery or by certified mail addressed to the Secretary of State, together with a fee of \$8.75. A copy of the process must be sent to the individual or entity at the last known address by certified or registered mail.<sup>20</sup> Case law interpreting the statute requires that a party using substituted service on the Secretary of State make an honest and conscientious effort, in addition to the mailing, to provide the defendant with actual notice of the lawsuit,<sup>21</sup> which may be notice through a known email.<sup>22</sup> When using substituted service on the Secretary of State, the bill:

- Allows the Secretary of State to agree to receive service of process electronically;
- Repeals the \$8.75 fee payable to the Secretary of State;
- Expands the options for delivery by adding the option to use a commercial firm regularly engaged in the business of document or package delivery as an alternative to mailing;
- Requires that the party send a copy by e-mail or other electronic means if the parties have recently and regularly used any of those means of communication;
- Requires that the party send a copy by mail or commercial delivery of the process to the last known address of the party being served;
- Requires the party to file with the court proof of delivery from the post office or commercial service, unless the party being served is actively refusing or rejecting delivery;
- Requires the party to file an affidavit showing due diligence in the search for the party being served and the need for substituted service, together with any return receipt or other proof of

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<sup>19</sup> Section 48.111(1), F.S.

<sup>20</sup> Section 48.161, F.S.

<sup>21</sup> *All Mobile Video v. Whitener*, 773 So. 2d 587, 589-90 (Fla. 1st DCA 2000) (plaintiff knew telephone and fax number of defendant company but did not call or fax for new address when mailed copy of process was returned).

<sup>22</sup> *Crystal Springs Partners, Ltd. v. Michael R. Band, P.A.*, 132 So. 3d 1230 (Fla 3rd DCA 2014) (law firm plaintiff knew former client's email address and should have emailed copy of process in addition to mailing).

mailing or delivery, within 40 days after delivery to the Secretary of State. The court may extend the 40 days; and

- Establishes that the date of service of substituted process is the date of delivery to the Secretary of State. The Secretary of State must maintain a record of each process delivered.

The bill also defines the due diligence necessary before resorting to substituted service on a natural person as:

- Diligent inquiry and an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;
- Reasonable use of the knowledge at the party's command, including knowledge obtained by the diligent inquiry; and
- An appropriate number of attempts to serve the party, taking into account the particular circumstances, during such times when and where the party is reasonably likely to be found, as determined through resources reasonably available to the party seeking to secure service of process.

### **Authorization for Substituted Service on Nonresidents and Foreign Business Entities Doing Business in the State or Who Are Concealing Their Whereabouts (Section 12)**

Current law provides that a nonresident individual or entity doing business in the state is presumed to have appointed the Secretary of State to accept service of process. This also applies to any person who was a resident of the state but who has left the state and to a person who is concealing his or her whereabouts.<sup>23</sup>

The bill repeals the application of this section to former residents, as service on them is provided in statutes allowing for service outside of the state. If a nonresident business entity has properly registered with the Department of State, the bill requires that service of process first be attempted by delivery to the registered agent, then to the entity officials as appropriate to the form of entity, and only after failing in all such attempts, by substituted service on the Secretary of State.

### **Service on Unknown Parties in Possession of Rental Property (Section 13)**

Landlord-tenant eviction requires two attempts at personal service on a tenant at least six hours apart. If the tenant is not found after the second attempt, the process must be conspicuously posted on the rental property and a copy mailed to the tenant by the clerk.<sup>24</sup> It is unclear whether this procedure applies where an unknown person is discovered to be living in the rental unit.

The bill creates a new section of law limited to service of process on an unknown person in possession of real property. The clerk of court is required to issue a summons in the name of "Unknown Party in Possession." The property owner must make three attempts at service, one during business hours, one during nonbusiness hours, and one on a weekend.<sup>25</sup> On each attempt the process server must inquire as to the name of the unknown occupant. The property owner must have a copy of the process mailed by the clerk of court to the unknown party in possession

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<sup>23</sup> Section 48.181, F.S.

<sup>24</sup> Section 48.183, F.S.

<sup>25</sup> In general, service of process may not be made on a Sunday. Section 48.20, F.S.

at the property address and must post a copy of the process conspicuously on the property. The date of service for purposes of calculating the 5 days for a defendant to file an answer is the later of the date of personal service, the date of posting on the property, or the date the clerk mails the process. If the inquiry discovers the name of the unknown person in possession, the person must be named in the pleadings. If the name is not known and the legal requirements of eviction are met, the clerk may issue a writ of possession against an unknown person and the sheriff may remove any person on the property.

### **Personal Service Outside of Florida (Sections 14 and 15)**

Service on persons outside the state is effective if made in the manner required for in-state process, except that it must be served by a person authorized under that jurisdiction's law to serve process.<sup>26</sup> The statute mentions that service outside of the United States may be subject to treaty, but does not require compliance. The bill limits application of this section to service within the other 49 states and within U.S. territories and commonwealths, and creates a new section governing service of Florida process upon a person or entity in a foreign country.

The bill provides that service of process may be effectuated in a foreign country upon a party, other than a minor or an incompetent person, by any internationally agreed-upon means of service reasonably calculated to give actual notice of the proceedings, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. If there is no internationally agreed-upon means of service, or if an international agreement allows but does not specify other means, service of process may be made by any method reasonably calculated to give actual notice of the proceedings. Reasonable methods are those prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction, those directed by the foreign authority in response to a letter rogatory or letter of request, or unless prohibited by the foreign country's law, by delivering a copy of the summons and of the complaint to the individual personally or by using any form of mail which the clerk addresses and sends to the party, which requires a signed receipt. Pursuant to motion and order by the court, service of process may be by other means, including electronically by email or other technology, if the party seeking service shows such form of service is reasonably calculated to give actual notice of the proceedings and is not prohibited by international agreement.

### **Service of Process by Publication (Section 16)**

The bill amends s. 49.011, F.S., to expand the cases in which service of process by publication is permitted. The bill authorizes service by publication in a paternity case upon the legal mother when there is no legal father established.

### **Presuit Notice in Medical Negligence Action (Section 17)**

Before filing a medical negligence action, an injured patient must first deliver to each prospective defendant a notice of intent to file the action. This notice starts a 90-day presuit investigation period. The notice also tolls the running of the statute of limitations. The notice

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<sup>26</sup> Section 48.194, F.S.

must be delivered by certified mail, return receipt requested.<sup>27</sup> While many laws on service of process by mail provide that the date of service is the day of mailing, this statute has been interpreted to mean that the date of service is the day that the prospective defendant received the mailing.<sup>28</sup>

The bill expands the methods of service of the presuit notice to allow United States mail service with a tracking number, use of an interstate commercial mail carrier or delivery service, or service by any person authorized by law to serve process. The bill also specifies that delivery to an address on file with the Department of Health, the Secretary of State, or the Agency for Health Care Administration creates a rebuttable presumption that service of the presuit notice was made. If the question of proper service is made, the court must conduct an evidentiary hearing, and if service is challenged, it must be challenged in the first response to the complaint.<sup>29</sup> The bill also provides that tolling of the statute of limitations begins on the date of mailing or the date of the first attempt at service by the certified process server, tolling applies to all defendants, and the 90-day investigation period starts upon delivery of the notice rather than upon mailing.

#### **Miscellaneous (Sections 10, 18, and 20)**

The bill amends ss. 48.151, 495.145, and 605.09091, F.S., respectively, to make conforming changes to provisions made by the bill.

#### **Effective Date**

The section of the bill regarding notice before filing an action for medical malpractice takes effect upon becoming law, the remainder of the bill takes effect January 2, 2023.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>27</sup> Section 766.106(2), F.S.

<sup>28</sup> *Boyd v. Becker*, 627 So. 2d 481 (Fla.1993); *Bove v. Naples, LLC*, 196 So. 3d 411 (Fla. 2nd DCA 2016) (case dismissed where notice was mailed one day before statute of limitations ran and received several days after).

<sup>29</sup> If the court determines that service was properly made and the prospective defendant proves by the greater weight of the evidence that neither they nor a person legally related to the prospective defendant knew or should have known of the service, the court must stay the case for a presuit period pursuant to s. 766.106, F.S. In such situation, the statute of limitations and statute of repose are tolled from the time service was properly made at the prospective defendant's address until the conclusion of the presuit period.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 15.16, 48.061, 48.062, 48.071, 48.081, 48.091, 48.101, 48.111, 48.151, 48.161, 48.181, 48.194, 49.011, 766.106, 495.145, 605.0117, 605.09091, 605.0910, 605.1045, 607.0504, 607.1423, 607.15101, 607.1520, 617.0504, 617.1510, 617.1520, 620.1117, 620.1907, 620.2105, 620.2109, 620.8915, and 620.8919.

This bill creates the following sections of the Florida Statutes: 48.102, 48.184, and 48.197.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Commerce and Tourism on January 31, 2022:**

The committee substitute:

- Adds to the section of the bill dealing with alternative means of service and provides that after due diligence, other manners of service may include service electronically by email or other technology by any person authorized to serve process or by an attorney. It also provides that the court may authorize other methods of service consistent with the principles of due process, and in suits involving a breach of contract, the court may authorize the parties to effectuate service in the manner provided in the contractual notice provision of the contract;
- Provides the manner and order of priority for attempted service on public agencies and officers;
- Removes the rebuttable presumption used in determining whether the party effectuating service used due diligence with substituted service on nonresidents;
- Authorizes service by publication in a paternity case upon the legal mother when there is no legal father established; and
- Establishes that a claimant may provide notice by using any person authorized by law to serve process in litigation for medical negligence, and clarifies that if service is challenged it must be challenged in the first response to the complaint.

**CS by Judiciary on January 11, 2022:**

The committee substitute removes references to service or notice by social media, limits the new criteria for due diligence to only apply the criteria to service of process on an individual, makes technical amendments to section of bill regarding service of process on an unnamed occupant of a rental property and allows posting on any attempt, and adds a duty of a foreign corporation to keep its email address on file with the Secretary of State current to match the same change made by the bill to partnerships and limited liability companies.

**B. Amendments:**

None.



By the Committees on Commerce and Tourism; and Judiciary; and  
Senator Bradley

577-02515-22

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1 A bill to be entitled  
2 An act relating to service of process; amending s.  
3 15.16, F.S.; authorizing the Department of State to  
4 electronically receive service of process under ch.  
5 48, F.S.; amending s. 48.061, F.S.; revising  
6 procedures for service on partnerships, limited  
7 liability partnerships, and limited partnerships;  
8 amending s. 48.062, F.S.; defining the term  
9 "registered foreign limited liability company";  
10 revising procedures for service on a domestic limited  
11 liability company or registered foreign limited  
12 liability company; amending s. 48.071, F.S.; providing  
13 for service on nonresidents doing business in this  
14 state by use of a commercial firm regularly engaged in  
15 the business of document or package delivery; amending  
16 s. 48.081, F.S.; defining the term "registered foreign  
17 corporation"; revising requirements for service on a  
18 domestic corporation or registered foreign  
19 corporation; amending s. 48.091, F.S.; defining terms;  
20 requiring designation of registered agents and  
21 registered offices by certain partnerships,  
22 corporations, and companies; specifying duties of a  
23 registered agent; authorizing a person serving process  
24 to serve certain persons under specified conditions;  
25 amending s. 48.101, F.S.; providing for service on  
26 dissolved corporations, dissolved limited liability  
27 companies, dissolved limited partnerships, and  
28 dissolved limited liability partnerships; creating s.  
29 48.102, F.S.; authorizing service by other means in

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

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30 certain circumstances; amending s. 48.111, F.S.;  
31 revising provisions related to service on public  
32 agencies and officers; authorizing service on  
33 specified persons under certain circumstances;  
34 amending s. 48.151, F.S.; revising the applicability  
35 of provisions relating to service on statutory agents  
36 for certain persons; amending s. 48.161, F.S.;  
37 revising provisions relating to substituted service;  
38 providing for substituted service on individuals or  
39 corporations or other business entities; specifying  
40 actions that may be considered due diligence in  
41 effectuating service; specifying when service is  
42 considered effectuated; requiring the Department of  
43 State to maintain certain records; amending s. 48.181,  
44 F.S.; defining the term "foreign business entity";  
45 revising provisions relating to substituted service;  
46 providing for substituted service on certain  
47 nonresidents and foreign business entities and on  
48 individuals and foreign business entities concealing  
49 their whereabouts; creating s. 48.184, F.S.; providing  
50 for service of process for removal of unknown parties  
51 in possession of real property; amending s. 48.194,  
52 F.S.; revising provisions relating to service outside  
53 this state but within the United States; deleting  
54 provisions relating to service outside the United  
55 States; creating s. 48.197, F.S.; providing for  
56 service in a foreign country; amending s. 49.011,  
57 F.S.; providing for constructive service on the legal  
58 mother in certain situations; amending s. 766.106,

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

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F.S.; revising requirements for service of presuit notice before filing a medical negligence complaint; creating a rebuttable presumption that service was received by a prospective defendant in certain circumstances; providing court duties if service is challenged during subsequent litigation; revising provisions concerning tolling of the statute of limitations upon service of presuit notice by specified means; specifying that the terms "prospective" and "potential" are interchangeable; amending ss. 495.145, 605.0117, 605.09091, 605.0910, 605.1045, 607.0504, 607.1423, 607.15101, 607.1520, 617.0504, 617.1510, 617.1520, 620.1117, 620.1907, 620.2105, 620.2109, 620.8915, and 620.8919, F.S.; conforming cross-references and provisions to changes made by the act; providing effective dates.

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

Section 1. Subsection (3) of section 15.16, Florida Statutes, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(3) The Department of State may cause to be received electronically any records that are required or authorized to be filed with it pursuant to chapter 48, chapter 55, chapter 117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, chapter 610, chapter 617, chapter 620, chapter 621, chapter 679,

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chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5)(b). The receipt of such electronic transfer constitutes delivery to the department as required by law. The department may use electronic transmissions for purposes of notice in the administration of chapters 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, and 713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

Section 2. Section 48.061, Florida Statutes, is amended to read:

48.061 Service on partnerships, limited liability partnerships, and limited partnerships.—

(1) (a) Process against a partnership that is not a limited liability partnership or a limited partnership, including a limited liability limited partnership, must ~~shall~~ be served on any partner and is as valid for service on the partnership as if served on each individual partner.

1. If a partner is not available during regular business hours to accept service on behalf of the partnership, he or she may designate an employee or agent to accept such service.

2. After one attempt to serve a partner or designated employee or agent for service of process has been made, process may be served on a person in charge of the partnership during regular business hours.

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(b) If the partnership designated an agent when registering as a general partnership with the Department of State, service on the agent is as valid for service on the partnership as if served on each individual partner; however, unless individual partners are served, the plaintiff may only proceed to judgment and execution against the assets of the partnership.

(2) (a) Process against a domestic limited liability partnership must first be served on the then-current registered agent for service of process specified in its statement of qualification, in its statement of qualification as amended or restated, or as redesignated in its annual report or change of agent filing and is as valid for service on the limited liability partnership as if served on each individual partner. If service cannot be made on the registered agent because the domestic limited liability partnership ceases to have a registered agent, or if the registered agent cannot otherwise be served after one good faith attempt because of a failure to comply with this chapter or chapter 620, the process may be served on any partner.

1. If a partner is not available during regular business hours to accept service on behalf of the partnership, he or she may designate an employee to accept such service.

2. After one attempt to serve a partner or designated employee has been made, process may be served on a person in charge of the partnership during regular business hours.

(b) If, after due diligence, the process cannot be completed under paragraph (a), the process may be served as provided in s. 48.161 on the Secretary of State as an agent of the domestic limited liability partnership or by order of the

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court under s. 48.102.

(3) (a) 1. Process against a domestic limited partnership, including a domestic limited liability limited partnership, must first be served on the then-current agent for service of process specified in its certificate of limited partnership, in its certificate as amended or restated, or as redesignated in its annual report or change of agent filing and is as valid for service on the domestic limited partnership as if served on each individual general partner of the partnership.

2. If service cannot be made on the registered agent because the domestic limited partnership or domestic limited liability limited partnership ceases to have a registered agent, or if the registered agent cannot otherwise be served following one good faith attempt because of a failure to comply with this chapter or chapter 620, the process may be served on any general partner.

3. After service on a general partner or the registered agent, the plaintiff may proceed to judgment and execution against the assets of the domestic limited partnership or of that general partner, unless the domestic limited partnership is a limited liability limited partnership.

(b) If, after due diligence, the process cannot be completed under paragraph (a), then process may be served as provided in s. 48.161 on the Secretary of State as an agent of the limited partnership or by order of the court under s. 48.102.

(4) (a) Process against a foreign limited liability partnership that was required to comply with s. 620.9102 may be served as prescribed under subsection (2).

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(b) A foreign limited liability partnership engaging in business in this state but not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102.

(5) (a) Process against a foreign limited partnership that was required to comply with s. 620.1902 may be served as prescribed under subsection (3).

(b) A foreign limited partnership engaging in business in this state but not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102. After one attempt to serve a partner or designated employee has been made, process may be served on the person in charge of the partnership during regular business hours. After service on any partner, plaintiff may proceed to judgment and execution against that partner and the assets of the partnership. After service on a designated employee or other person in charge, plaintiff may proceed to judgment and execution against the partnership assets but not against the individual assets of any partner.

~~(2) Process against a domestic limited partnership may be served on any general partner or on the agent for service of process specified in its certificate of limited partnership or in its certificate as amended or restated and is as valid as if served on each individual member of the partnership. After service on a general partner or the agent, the plaintiff may proceed to judgment and execution against the limited partnership and all of the general partners individually. If a~~

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~~general partner cannot be found in this state and service cannot be made on an agent because of failure to maintain such an agent or because the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181. Service of process may be made under ss. 48.071 and 48.21 on limited partnerships.~~

~~(3) Process against a foreign limited partnership may be served on any general partner found in the state or on any agent for service of process specified in its application for registration and is as valid as if served on each individual member of the partnership. If a general partner cannot be found in this state and an agent for service of process has not been appointed or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181, or process may be served as provided in ss. 48.071 and 48.21.~~

Section 3. Section 48.062, Florida Statutes, is amended to read:

48.062 Service on a domestic limited liability company or registered foreign limited liability company.-

(1) As used in this section, the term "registered foreign limited liability company" means a foreign limited liability company that has an active certificate of authority to transact business in this state pursuant to a record filed with the Department of State.

~~(2) Process against~~ A domestic limited liability company,

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~~domestic or registered foreign limited liability company,~~ may be served with process required or authorized by law by service on its ~~the~~ registered agent designated by the domestic limited liability company or registered foreign limited liability company under chapter 605. ~~A person attempting to serve process pursuant to this subsection may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.~~

(3) ~~(2)~~ If service cannot be made on a registered agent of the domestic limited liability company or registered foreign limited liability company because the domestic limited liability company or registered foreign limited liability company ceases to have a registered agent, or if the registered agent of the domestic limited liability company or registered foreign limited liability company cannot otherwise be served after one good faith attempt because of a failure to comply with this chapter or chapter 605 or because the limited liability company does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the limited liability company, domestic or foreign, the process may be served on any of the following:

(a) Any manager of a manager-managed domestic limited liability company or registered foreign limited liability company. ~~On a member of a member-managed limited liability company,~~

(b) Any member of a member-managed domestic limited liability company or registered foreign limited liability company. ~~On a manager of a manager-managed limited liability~~

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~~company, or~~

(c) Any person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended ~~if a member or manager is not available during regular business hours to accept service on behalf of the limited liability company, he, she, or it may designate an employee of the limited liability company to accept such service. After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the limited liability company during regular business hours.~~

(4) ~~(3)~~ If, after due reasonable diligence, the service of process cannot be completed under subsection (2) and if either:

(a) The only person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, is also the registered agent on whom service was attempted under subsection (2); or

(b) After due diligence, service was attempted on at least one person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, and cannot be completed on such person under subsection (3) ~~(1) or subsection (2),~~

the service of process may be served as provided in s. 48.161 on ~~effected by service upon~~ the Secretary of State as an agent of the domestic limited liability company or the registered foreign limited liability company or by order of the court under s.

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48.102 ~~as provided for in s. 48.181.~~

(5) ~~(4)~~ If the address for the registered agent or any person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, member, or manager is a residence, a private mailbox, a virtual office, or an executive office or mini suite, service on the domestic limited liability company or registered foreign limited liability company may be made by serving any of the following:

(a) The registered agent of the domestic limited liability company or registered foreign limited liability company, in accordance with s. 48.031.

(b) Any person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended, in accordance with s. 48.031.

(c) Any ~~member, or manager~~ of the domestic limited liability company or registered foreign limited liability company, in accordance with s. 48.031.

(6) A foreign limited liability company engaging in business in this state which is not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102.

(7) ~~(5)~~ This section does not apply to service of process on insurance companies.

Section 4. Section 48.071, Florida Statutes, is amended to read:

48.071 Service on agents of nonresidents doing business in

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the state.—When any natural person or partnership not residing or having a principal place of business in this state engages in business in this state, process may be served on the person who is in charge of any business in which the defendant is engaged within this state at the time of service, including agents soliciting orders for goods, wares, merchandise, or services. Any process so served is as valid as if served personally on the nonresident person or partnership engaging in business in this state in any action against the person or partnership arising out of such business. A copy of such process with a notice of service on the person in charge of such business must ~~shall~~ be sent forthwith to the nonresident person or partnership by registered mail; by ~~or~~ certified mail, return receipt requested; or by use of a commercial firm regularly engaged in the business of document or package delivery. The party seeking to effectuate service, or the attorney for such party, shall prepare ~~an~~ affidavit of compliance with this section which must ~~shall~~ be filed before the return day or within such further time as the court may allow.

Section 5. Section 48.081, Florida Statutes, is amended to read:

48.081 Service on a domestic corporation or registered foreign corporation.—

(1) As used in this section, the term "registered foreign corporation" means a foreign corporation that has an active certificate of authority to transact business in this state pursuant to a record filed with the Department of State.

(2) A domestic corporation or a registered foreign corporation may be served with process required or authorized by

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law by service on its registered agent designated by the corporation under chapter 607 or chapter 617, as applicable.

(3) If service cannot be made on a registered agent of the domestic corporation or registered foreign corporation because the domestic corporation or registered foreign corporation ceases to have a registered agent, or if the registered agent of the domestic corporation or registered foreign corporation cannot otherwise be served after one good faith attempt because of a failure to comply with this chapter, chapter 607, or chapter 617, as applicable, the process may be served on either of the following ~~Process against any private corporation, domestic or foreign, may be served:~~

(a) The chair of the board of directors, ~~On~~ the president, any ~~or~~ vice president, the secretary, or the treasurer ~~or other head of the domestic corporation or registered foreign corporation.~~

(b) Any person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most recently amended ~~in the absence of any person described in paragraph (a), on the cashier, treasurer, secretary, or general manager.~~

~~(c) In the absence of any person described in paragraph (a) or paragraph (b), on any director; or~~

~~(d) In the absence of any person described in paragraph (a), paragraph (b), or paragraph (c), on any officer or business agent residing in the state.~~

(4) If, after due diligence, the process cannot be completed under subsection (2) and if either:

(a) The only person listed publicly by the domestic

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corporation or registered foreign corporation on its latest annual report, as most recently amended, is also the registered agent on whom service was attempted under subsection (2); or

(b) After due diligence, service was attempted on at least one person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most recently amended, and cannot be completed on such person under subsection (3).

the process may be served as provided in s. 48.161 on the Secretary of State as an agent of the domestic corporation or registered foreign corporation or by order of the court under s. 48.102

~~(2) If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state.~~

~~(3) (a) As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under s. 48.091. However, if service cannot be made on a registered agent because of failure to comply with s. 48.091, service of process shall be permitted on any employee at the corporation's principal place of business or on any employee of the registered agent. A person attempting to serve process pursuant to this paragraph may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is temporarily absent from his or her office.~~

~~(5) (b)~~ If the address for the registered agent or any person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most

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recently amended, ~~officer, director, or principal place of business~~ is a residence, a private mailbox, a virtual office, or an executive office or mini suite, service on the domestic corporation or registered foreign corporation may be made by serving any of the following:

(a) The registered agent of the domestic corporation or registered foreign corporation, ~~officer, or director~~ in accordance with s. 48.031.

(b) Any person listed publicly by the domestic corporation or registered foreign corporation on its latest annual report, as most recently amended, in accordance with s. 48.031.

(c) Any person serving in one of the positions specified in paragraph (3)(a), in accordance with s. 48.031.

(6) A foreign corporation engaging in business in this state which is not registered is considered, for purposes of service of process, a nonresident engaging in business in this state and may be served pursuant to s. 48.181 or by order of the court under s. 48.102.

(7) ~~(4)~~ This section does not apply to service of process on insurance companies.

~~(5) When a corporation engages in substantial and not isolated activities within this state, or has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent while on corporate business within this state may personally be made, pursuant to this section, and it is not necessary in such case that the action, suit, or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being~~

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~~transacted within the state.~~

Section 6. Section 48.091, Florida Statutes, is amended to read:

48.091 Partnerships, corporations, and limited liability companies; designation of registered agent and registered office.—

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

(a) "Registered foreign corporation" and "registered foreign limited liability company" have the same meanings as in ss. 48.081 and 48.062, respectively.

(b) "Registered foreign limited liability partnership" or "registered foreign limited partnership" means a foreign limited liability partnership or foreign limited partnership that has an active certificate of authority to transact business in this state pursuant to a record filed with the Department of State.

(2) Every domestic limited liability partnership; domestic limited partnership, including limited liability limited partnerships; domestic corporation; domestic limited liability company; registered foreign limited liability partnership; registered foreign limited partnership, including limited liability limited partnerships; registered foreign corporation; and registered foreign limited liability company ~~Florida corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state~~ shall designate a registered agent and registered office in accordance with chapter 605, ~~part I of~~ chapter 607, chapter 617, or chapter 620, as applicable.

(3) ~~(2)~~ Every domestic limited liability partnership; domestic limited partnership, including limited liability



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465 limited partnerships; domestic corporation; domestic limited  
 466 liability company; registered foreign limited liability  
 467 partnership; registered foreign limited partnership, including  
 468 limited liability limited partnerships; registered foreign  
 469 corporation; registered foreign limited liability company; and  
 470 domestic or foreign general partnership that elects to designate  
 471 a registered agent, shall cause the designated registered agent  
 472 to ~~corporation shall~~ keep the designated registered office open  
 473 from at least 10 a.m. to 12 noon each day except Saturdays,  
 474 Sundays, and legal holidays, and shall cause the designated  
 475 registered agent to keep one or more individuals who are, or are  
 476 representatives of, the designated ~~registered agents on whom~~  
 477 process may be served at the office during these hours. The  
 478 corporation shall keep a sign posted in the office in some  
 479 conspicuous place designating the name of the corporation and  
 480 the name of its registered agent on whom process may be served  
 481 at the office during these hours.

482 (4) A person attempting to serve process pursuant to this  
 483 section on a registered agent that is other than a natural  
 484 person may serve the process on any employee of the registered  
 485 agent. A person attempting to serve process pursuant to this  
 486 section on a natural person, if the natural person is  
 487 temporarily absent from his or her office, may serve the process  
 488 during the first attempt at service on any employee of such  
 489 natural person.

490 (5) The registered agent shall promptly forward copies of  
 491 the process and any other papers received in connection with the  
 492 service to a responsible person in charge of the business  
 493 entity. Failure to comply with this subsection does not

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494 invalidate the service of process.

495 Section 7. Section 48.101, Florida Statutes, is amended to  
 496 read:

497 48.101 Service on dissolved corporations, ~~dissolved limited~~  
 498 liability companies, dissolved limited partnerships, and  
 499 dissolved limited liability partnerships.-

500 (1) Process against the directors of any corporation that  
 501 ~~which~~ was dissolved before July 1, 1990, as trustees of the  
 502 dissolved corporation ~~must shall~~ be served on one or more of the  
 503 directors of the dissolved corporation as trustees thereof and  
 504 binds all of the directors of the dissolved corporation as  
 505 trustees thereof. ~~Process against any other dissolved~~  
 506 corporation shall be served in accordance with s. 48.081.

507 (2) (a) Process against any other dissolved domestic  
 508 corporation must be served in accordance with s. 48.081.

509 (b) In addition, provided that service was first properly  
 510 attempted on the registered agent pursuant to s. 48.081(2), but  
 511 was not successful, service may then be attempted as required  
 512 under s. 48.081(3). In addition to the persons listed in s.  
 513 48.081(3), service may then be attempted on the person appointed  
 514 by the circuit court as the trustee, custodian, or receiver  
 515 under s. 607.1405(6).

516 (c) A party attempting to serve a dissolved domestic for-  
 517 profit corporation under this section may petition the court to  
 518 appoint one of the persons specified in s. 607.1405(6) to  
 519 receive service of process on behalf of the corporation.

520 (3) (a) Process against any dissolved domestic limited  
 521 liability company must be served in accordance with s. 48.062.

522 (b) In addition, provided that service was first properly

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attempted on the registered agent pursuant to s. 48.062(2), but was not successful, service may then be attempted as required under s. 48.062(3). In addition to the persons listed in s. 48.062(3), service on a dissolved domestic limited liability company may be made on the person appointed as the liquidator, trustee, or receiver under s. 605.0709.

(c) A party attempting to serve a dissolved domestic limited liability company under this section may petition the court to appoint one of the persons specified in s. 605.0709(5) to receive service of process on behalf of the limited liability company.

(4) Process against any dissolved domestic limited partnership must be served in accordance with s. 48.061.

Section 8. Section 48.102, Florida Statutes, is created to read:

48.102 Service by other means.—If, after due diligence, a party seeking to effectuate service is unable to effectuate personal service of process on a domestic or foreign corporation; a domestic or foreign general partnership, including a limited liability partnership; a domestic or foreign limited partnership, including a limited liability limited partnership; or a domestic or foreign limited liability company, the court, upon motion and a showing of such inability, may authorize service in any other manner that the party seeking to effectuate service shows will be reasonably effective to give the entity on which service is sought to be effectuated actual notice of the suit. Such other manners of service may include service electronically by e-mail or other technology by any person authorized to serve process in accordance with this

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chapter, or by an attorney. The court may authorize other methods of service consistent with the principles of due process. In suits involving a breach of contract, the court may consider authorizing the parties to effectuate service in the manner provided for in the contractual notice provision of the subject contract.

Section 9. Subsection (1) of section 48.111, Florida Statutes, is amended to read:

48.111 Service on public agencies and officers.—

(1) Process against any municipal corporation, agency, board, or commission, department, or subdivision of the state or any county which has a governing board, council, or commission or which is a body corporate shall be served:

(a) On the registered agent; or

(b) If the municipal corporation, agency, board, or commission, department, or subdivision of the state does not have a registered agent, or if the registered agent cannot otherwise be served after one good faith attempt:

1. On the president, mayor, chair, or other head thereof; and in the ~~his or her~~ absence of all persons listed in this subparagraph;

2. ~~(b)~~ On the vice president, vice mayor, or vice chair, and ~~or~~ in the absence of all persons listed in subparagraph 1. and this subparagraph of the above;

3. ~~(c)~~ On any member of the governing board, council, or commission, the manager of the governmental entity, if any, or an in-house attorney for the governmental entity, if any, and in the absence of all the persons listed in subparagraph 1., subparagraph 2., and this subparagraph;

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581 4. On any employee of the governmental entity at the main  
 582 office of the governmental entity.

583 Section 10. Subsection (2) of section 48.151, Florida  
 584 Statutes, is amended to read:

585 48.151 Service on statutory agents for certain persons.—

586 (2) This section does not apply to substituted service of  
 587 process under s. 48.161 or s. 48.181 ~~on nonresidents.~~

588 Section 11. Section 48.161, Florida Statutes, is amended to  
 589 read:

590 48.161 Method of substituted service on nonresident.—

591 (1) When authorized by law, substituted service of process  
 592 on a nonresident individual or a corporation or other business  
 593 entity incorporated or formed under the laws of any other state,  
 594 territory, or commonwealth, or the laws of any foreign country,  
 595 may or a person who conceals his or her whereabouts by serving a  
 596 public officer designated by law shall be made by sending  
 597 leaving a copy of the process to the office of the Secretary of  
 598 State by personal delivery; by registered mail; with a fee of  
 599 \$0.75 with the public officer or in his or her office or by  
 600 mailing the copies by certified mail, return receipt requested;  
 601 by use of a commercial firm regularly engaged in the business of  
 602 document or package delivery; or by electronic transmission to  
 603 the public officer with the fee. The service is sufficient  
 604 service on a party that defendant who has appointed or is deemed  
 605 to have appointed the Secretary of State a public officer as  
 606 such party's his or her agent for the service of process. The  
 607 Secretary of State shall keep a record of all process served on  
 608 the Secretary of State showing the day and hour of service.

609 (2) Notice of service and a copy of the process must shall

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610 be sent forthwith by the party effectuating service or by such  
 611 party's attorney by registered mail; by ~~registered or~~ certified  
 612 mail, return receipt requested; or by use of a commercial firm  
 613 regularly engaged in the business of document or package  
 614 delivery. In addition, if the parties have recently and  
 615 regularly used e-mail or other electronic means to communicate  
 616 between themselves, the notice of service and a copy of the  
 617 process must be sent by such electronic means or, if the party  
 618 is being served by substituted service, the notice of service  
 619 and a copy of the process must be served at such party's last  
 620 known physical address and, if applicable, last known electronic  
 621 address. The party effectuating service shall file proof of  
 622 service or return receipts showing delivery to the other party  
 623 by mail or courier and by electronic means, if electronic means  
 624 were used, unless the party is actively refusing or rejecting  
 625 the delivery of the notice. An ~~by the plaintiff or his or her~~  
 626 attorney to the defendant, and the defendant's return receipt  
 627 and the affidavit of compliance of the party effectuating  
 628 service plaintiff or such party's his or her attorney must of  
 629 compliance shall be filed within 40 days after ~~on or before~~ the  
 630 date ~~return day~~ of service on the Secretary of State process or  
 631 within such additional time as the court allows. The affidavit  
 632 of compliance must set forth the facts that justify substituted  
 633 service under this section and that show due diligence was  
 634 exercised in attempting to locate and effectuate personal  
 635 service on the party before using substituted service under this  
 636 section. The party effectuating service does not need to allege  
 637 in its original or amended complaint the facts required to be  
 638 set forth in the affidavit of compliance.

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(3) When an individual or a business entity conceals its whereabouts, the party seeking to effectuate service, after exercising due diligence to locate and effectuate personal service, may use substituted service pursuant to subsection (1) in connection with any action in which the court has jurisdiction over such individual or business entity. The party seeking to effectuate service must also comply with subsection (2); however, a return receipt or other proof showing acceptance of receipt of the notice of service and ~~a, or the notice and~~ copy of the ~~shall be served on the defendant, if found within the state, by an officer authorized to serve legal process by the concealed party need not be filed, or if found without the state, by a sheriff or a deputy sheriff of any county of this state or any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found. The officer's return showing service shall be filed on or before the return day of the process or within such time as the court allows. The fee paid by the plaintiff to the public officer shall be taxed as cost if he or she prevails in the action. The public officer shall keep a record of all process served on him or her showing the day and hour of service.~~

(4) The party effectuating service is considered to have used due diligence if that party:

(a) Made diligent inquiry and exerted an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;

(b) In seeking to effectuate personal service, reasonably employed the knowledge at the party's command, including knowledge obtained pursuant to paragraph (a); and

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(c) Made an appropriate number of attempts to serve the party, taking into account the particular circumstances, during such times when and where such party is reasonably likely to be found, as determined through resources reasonably available to the party seeking to secure service of process.

~~(5)(2)~~ If any individual ~~person~~ on whom service of process is authorized under subsection (1) dies, service may be made in the same manner on his or her administrator, executor, curator, or personal representative ~~in the same manner~~.

~~(9)(3)~~ This section does not apply to persons on whom service is authorized under s. 48.151.

~~(6)(4)~~ The Secretary of State ~~public officer~~ may designate an individual ~~some other person~~ in his or her office to accept service.

(7) Service of process is effectuated under this section on the date the service is received by the Department of State.

(8) The Department of State shall maintain a record of each process served pursuant to this section and record the time of and the action taken regarding the service.

Section 12. Section 48.181, Florida Statutes, is amended to read:

48.181 Substituted service on nonresidents and foreign business entities ~~nonresident~~ engaging in business in state or concealing their whereabouts.-

(1) As used in this section, the term "foreign business entity" means any corporation or other business entity that is incorporated, formed, or existing under the laws of any other state, territory, or commonwealth, or the laws of any foreign country.

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697 (2) The acceptance by any individual person or persons,  
 698 individually or associated together as a copartnership or any  
 699 other form or type of association, who is a resident are  
 700 residents of any other state, territory, or commonwealth, or of  
 701 any foreign or country, or by any foreign business entity and  
 702 all foreign corporations, and any person who is a resident of  
 703 the state and who subsequently becomes a nonresident of the  
 704 state or conceals his or her whereabouts, of the privilege  
 705 extended by law to nonresidents ~~and others~~ to operate, conduct,  
 706 engage in, or carry on a business or business venture in this  
 707 the state, or to have an office or agency in this the state, is  
 708 deemed to constitute ~~constitutes~~ an appointment by the  
 709 individual or persons and foreign business entity corporations  
 710 of the Secretary of State of this the state as its their agent  
 711 on whom ~~all~~ process in any action or proceeding against the  
 712 individual or foreign business entity them, or any combination  
 713 thereof of them, arising out of any transaction or operation  
 714 connected with or incidental to the business or business venture  
 715 may be served as substituted service in accordance with this  
 716 chapter. The acceptance of the privilege is signification of the  
 717 agreement of the respective individual or persons and foreign  
 718 business entity corporations that the process served against it  
 719 in accordance with this chapter them which is so served is of  
 720 the same validity as if served personally on the individual  
 721 persons or foreign business entity corporations.  
 722 (3) ~~(2)~~ If a foreign business entity corporation has  
 723 registered to do business a resident agent or officer in this  
 724 the state and has maintained its registration in an active  
 725 status or otherwise continued to have a registered agent,

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726 personal service of process must first ~~shall~~ be attempted ~~served~~  
 727 on the foreign business entity in the manner and order of  
 728 priority described in this chapter as applicable to the foreign  
 729 business entity. If, after due diligence, the party seeking to  
 730 effectuate service of process is unable to effectuate service of  
 731 process on the registered agent or other official as provided in  
 732 this chapter, the party may use substituted service of process  
 733 on the Secretary of State ~~resident agent or officer.~~  
 734 (4) Any individual or foreign business entity that conceals  
 735 its whereabouts is deemed to have appointed the Secretary of  
 736 State as its agent on whom all process may be served, in any  
 737 action or proceeding against it, or any combination thereof,  
 738 arising out of any transaction or operation connected with or  
 739 incidental to any business or business venture carried on in  
 740 this state by such individual or foreign business entity.  
 741 (5) ~~(3)~~ Any individual or foreign business entity that  
 742 person, firm, or corporation which sells, consigns, or leases by  
 743 any means whatsoever tangible or intangible personal property,  
 744 through brokers, jobbers, wholesalers, or distributors to any  
 745 individual person, firm, or corporation, or other business  
 746 entity in this state is conclusively presumed to be both engaged  
 747 in substantial and not isolated activities within this state and  
 748 operating, conducting, engaging in, or carrying on a business or  
 749 business venture in this state.  
 750 (6) Service pursuant to this section must be effectuated in  
 751 the manner prescribed by s. 48.161.  
 752 Section 13. Section 48.184, Florida Statutes, is created to  
 753 read:  
 754 48.184 Service of process for removal of unknown parties in

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possession.—

(1) This section applies only to actions governed by s. 82.03, s. 83.21, s. 83.59, or s. 723.061 and only to the extent that such actions seek relief for the removal of unknown parties in possession of real property. The provisions of this section are cumulative to other provisions of law or rules of court about service of process, and all other such provisions are cumulative to this section.

(2) A summons must be issued in the name of "Unknown Party in Possession" when the name of an occupant of real property is not known to the plaintiff and the property occupied by the unknown party is identified in the complaint and summons. A separate summons must be issued for each such unknown occupant.

(3) The plaintiff shall attempt to serve the summons on any unknown occupant of the property described in the summons and complaint. If service on the unknown occupant is not effectuated on the first attempt, at least two additional attempts must be made. The three attempts to obtain service must be made once during business hours, once during nonbusiness hours, and once during a weekend. The process server shall make an inquiry as to the name of the unknown occupant at the time of service. The return of service must note the name of the occupant if obtained by the process server or state that the name of the occupant could not be obtained after inquiry. If the name of the occupant becomes known to the plaintiff through the return of service or otherwise, without notice or hearing thereon, all subsequent proceedings must be conducted under the true name of such occupant and all prior proceedings are deemed amended accordingly.

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(4) Service of process must also be made on unknown occupants by both of the following means:

(a) By attaching the summons and complaint to a conspicuous location on the premises involved in the proceedings.

(b) Upon issuance of the summons, by the plaintiff providing the clerk of the court with one additional copy of the summons and complaint for each unknown occupant and a prestamped envelope for each unknown occupant addressed to the unknown occupant at the address of the premises involved in the proceedings. The clerk of the court shall immediately mail a copy of the summons and complaint by first-class mail, note the fact of mailing in the docket, and file a certificate in the court file of the fact and date of mailing. The clerk of the court shall charge such fees for such services as provided by law.

(5) Service is effective on the unknown occupant in possession on the later of the date that personal service is made, the date of attaching the summons and complaint to a conspicuous location on the premises, or upon mailing by the clerk.

(6) The judgment and writ of possession must refer to any unknown occupant in possession by name if the name is shown on the return of service or is otherwise known to the plaintiff. If the name of any unknown occupant in possession is not shown on the return of service or otherwise known to the plaintiff and service has been effectuated as provided in this section, the judgment and writ of possession must refer to each such person as "Unknown Party in Possession," and the writ of possession must be executed by the sheriff by dispossessing the occupants

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and placing the plaintiff in possession of the property.

Section 14. Subsections (1) and (2) of section 48.194, Florida Statutes, are amended to read:

48.194 Personal service in another outside state, territory, or commonwealth of the United States.-

(1) Except as otherwise provided herein, service of process on a party in another ~~persons outside of this~~ state, territory, or commonwealth of the United States ~~must~~ shall be made in the same manner as service within this state by any person authorized to serve process in the state where service shall be made the person is served. No order of court is required. A ~~court may consider the~~ return-of-service form described in s. 48.21, or any other competent evidence, must be filed with the court stating the time, manner, and place of service. The court may consider such evidence in determining whether service has been properly made. Service of process on persons outside the United States may be required to conform to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

(2) When ~~where~~ in rem or quasi in rem relief is sought in a foreclosure proceeding as defined by s. 702.09, and the address of the person to be served is known, service of process on a person in another state, territory, or commonwealth outside of the United States this state where the address of the person to be served is known may be made by registered mail as follows:

(a) The party's attorney or the party, if the party is not represented by an attorney, shall place a copy of the original process and the complaint, petition, or other initial pleading or paper and, if applicable, the order to show cause issued

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pursuant to s. 702.10 in a sealed envelope with adequate postage addressed to the person to be served.

(b) The envelope must ~~shall~~ be placed in the mail as registered mail.

(c) Service under this subsection is deemed ~~shall be considered~~ obtained upon the signing of the return receipt by the person allowed to be served by law.

Section 15. Section 48.197, Florida Statutes, is created to read:

48.197 Service in a foreign country.-

(1) Service of process may be effectuated in a foreign country upon a party, other than a minor or an incompetent person, as provided in any of the following:

(a) By any internationally agreed-upon means of service reasonably calculated to give actual notice of the proceedings, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

(b) If there is no internationally agreed-upon means of service, or if an international agreement allows but does not specify other means, by a method reasonably calculated to give actual notice of the proceedings:

1. As prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

2. As the foreign authority directs in response to a letter rogatory or letter of request; or

3. Unless prohibited by the foreign country's law, by:  
a. If serving an individual, delivering a copy of the

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summons and of the complaint to the individual personally; or  
b. Using any form of mail that the clerk addresses and  
 sends to the party and which requires a signed receipt.

(c) Pursuant to motion and order by the court, by other  
 means, including electronically by e-mail or other technology,  
 which the party seeking service shows is reasonably calculated  
 to give actual notice of the proceedings and is not prohibited  
 by international agreement, as the court orders.

(2) Service of process may be effectuated in a foreign  
 country upon a minor or an incompetent person in the manner  
 prescribed by subparagraph (1)(b)1., subparagraph (1)(b)2., or  
 paragraph (1)(c).

Section 16. Subsection (15) of section 49.011, Florida  
 Statutes, is amended to read:

49.011 Service of process by publication; cases in which  
 allowed.—Service of process by publication may be made in any  
 court on any party identified in s. 49.021 in any action or  
 proceeding:

(15) To determine paternity, but only as to:

(a) The legal father in a paternity action in which another  
 man is alleged to be the biological father, in which case it is  
 necessary to serve process on the legal father in order to  
 establish paternity with regard to the alleged biological  
 father; or

(b) The legal mother when there is no legal father.

Section 17. Effective upon this act becoming a law,  
 subsection (2), paragraph (a) of subsection (3), and subsection  
 (4) of section 766.106, Florida Statutes, are amended to read:

766.106 Notice before filing action for medical negligence;

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presuit screening period; offers for admission of liability and  
 for arbitration; informal discovery; review.—

(2) PRESUIT NOTICE.—

(a) After completion of presuit investigation pursuant to  
 s. 766.203(2) and ~~before~~ prior to filing a complaint for medical  
 negligence, a claimant shall notify each prospective defendant  
 of intent to initiate litigation for medical negligence by at  
 least one of the following verifiable means:

1. United States Postal Service certified mail, return  
 receipt requested;

2. United States Postal Service mail with a tracking  
 number;

3. An interstate commercial mail carrier or delivery  
 service; or

4. Any person authorized by law to serve process.

(b)1. Proof of service made pursuant to this subsection and  
 delivered to an address on file with the Department of Health,  
 the Secretary of State, or the Agency for Health Care  
 Administration creates a rebuttable presumption that service was  
 received by the prospective defendant.

2. If service is challenged during subsequent litigation,  
 the court must conduct an evidentiary hearing to determine  
 whether the prospective defendant or a person legally related to  
 the prospective defendant was provided notice pursuant to this  
 subsection and, if so, the date of such service. If service is  
 challenged under this subparagraph, it must be challenged in the  
 first response to the complaint, and if:

a. The court determines that service was properly made at  
 the prospective defendant's address as listed on the state



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licensing agency website or an address on file with the  
Secretary of State; and

b. The prospective defendant proves by the greater weight  
of the evidence that neither the prospective defendant nor a  
person legally related to the prospective defendant at the time  
of service knew or should have known of the service,

the court must stay the case for a presuit investigation period  
pursuant to s. 766.106, and the statute of limitations and  
statute of repose must be tolled from the time service was  
properly made at the prospective defendant's address as listed  
on the state licensing agency website or an address on file with  
the Secretary of State. The tolling shall end at the conclusion  
of the presuit investigation period provided for in this  
subsection, and the stay of litigation shall automatically end  
at the conclusion of the presuit investigation period by  
~~certified mail, return receipt requested, of intent to initiate  
litigation for medical negligence.~~

(c) Notice to each prospective defendant must include, if  
available, a list of all known health care providers seen by the  
claimant for the injuries complained of subsequent to the  
alleged act of negligence, all known health care providers  
during the 2-year period ~~before~~ prior to the alleged act of  
negligence who treated or evaluated the claimant, copies of all  
of the medical records relied upon by the expert in signing the  
affidavit, and the executed authorization form provided in s.  
766.1065.

~~(d) (b)~~ Following the initiation of a suit alleging medical  
negligence with a court of competent jurisdiction, and service

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of the complaint upon a prospective defendant, the claimant  
shall provide a copy of the complaint to the Department of  
Health and, if the complaint involves a facility licensed under  
chapter 395, the Agency for Health Care Administration. The  
requirement of providing the complaint to the Department of  
Health or the Agency for Health Care Administration does not  
impair the claimant's legal rights or ability to seek relief for  
his or her claim. The Department of Health or the Agency for  
Health Care Administration shall review each incident that is  
the subject of the complaint and determine whether it involved  
conduct by a licensee which is potentially subject to  
disciplinary action, in which case, for a licensed health care  
practitioner, ~~the provisions of s. 456.073 applies~~ apply and,  
for a licensed facility, ~~the provisions of part I of chapter 395  
applies~~ apply.

(3) PRESUIT INVESTIGATION BY PROSPECTIVE DEFENDANT.—

(a) A ~~no~~ suit may not be filed for a period of 90 days  
after notice is delivered ~~mailed~~ to any prospective defendant.  
During the 90-day period, the prospective defendant or the  
prospective defendant's insurer or self-insurer shall conduct a  
review as provided in s. 766.203(3) to determine the liability  
of the prospective defendant. Each insurer or self-insurer shall  
have a procedure for the prompt investigation, review, and  
evaluation of claims during the 90-day period. This procedure  
~~must~~ shall include one or more of the following:

1. Internal review by a duly qualified claims adjuster;
2. Creation of a panel comprised of an attorney  
knowledgeable in the prosecution or defense of medical  
negligence actions, a health care provider trained in the same

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or similar medical specialty as the prospective defendant, and a duly qualified claims adjuster;

3. A contractual agreement with a state or local professional society of health care providers, which maintains a medical review committee; or

4. Any other similar procedure which fairly and promptly evaluates the pending claim.

Each insurer or self-insurer shall investigate the claim in good faith, and both the claimant and prospective defendant shall cooperate with the insurer in good faith. If the insurer requires, a claimant must ~~shall~~ appear before a pretrial screening panel or before a medical review committee and shall submit to a physical examination, if required. Unreasonable failure of any party to comply with this section justifies dismissal of claims or defenses. There shall be no civil liability for participation in a pretrial screening procedure if done without intentional fraud.

(4) SERVICE OF PRESUIT NOTICE AND TOLLING.—The notice of intent to initiate litigation must ~~shall~~ be served within the time limits set forth in s. 95.11. However, upon mailing of the notice of intent to initiate litigation, as provided in subparagraph (2)(a)1., subparagraph (2)(a)2., or subparagraph (2)(a)3., and during the 90-day period provided in subsection (3), the statute of limitations is tolled as to all prospective potential defendants. If the notice of intent to initiate litigation is served by a process server as provided in subparagraph (2)(a)4., the statute of limitations is tolled upon the process server's first attempt to serve the prospective

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defendant and continues during the 90-day period as to all prospective defendants. Upon stipulation by the parties, the 90-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving notice of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit. As used in this section, the terms "prospective" and "potential" are interchangeable.

Section 18. Section 495.145, Florida Statutes, is amended to read:

495.145 Forum for actions regarding registration.—An action seeking cancellation of a registration of a mark registered under this chapter may be brought in any court of competent jurisdiction in this state. Service of process on a nonresident registrant may be made in accordance with ss. 48.161 and 48.181 ~~s. 48.181~~. The department may ~~shall~~ not be made a party to cancellation proceedings.

Section 19. Section 605.0117, Florida Statutes, is amended to read:

605.0117 Serving ~~Service of~~ process, giving notice, or making a demand.—

(1) Process against a limited liability company or registered foreign limited liability company may be served in accordance with s. 48.062 and chapter 48 or chapter 49 with process required or authorized by law by serving on its registered agent.

(2) ~~If a limited liability company or registered foreign limited liability company ceases to have a registered agent or~~

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1045 ~~if its registered agent cannot with reasonable diligence be~~  
 1046 ~~served, the process required or permitted by law may instead be~~  
 1047 ~~served.~~

1048 ~~(a) On a member of a member managed limited liability~~  
 1049 ~~company or registered foreign limited liability company; or~~

1050 ~~(b) On a manager of a manager managed limited liability~~  
 1051 ~~company or registered foreign limited liability company.~~

1052 ~~(3) If the process cannot be served on a limited liability~~  
 1053 ~~company or registered foreign limited liability company pursuant~~  
 1054 ~~to subsection (1) or subsection (2), the process may be served~~  
 1055 ~~on the secretary of state as an agent of the company.~~

1056 ~~(4) Service of process on the secretary of state may be~~  
 1057 ~~made by delivering to and leaving with the department duplicate~~  
 1058 ~~copies of the process.~~

1059 ~~(5) Service is effectuated under subsection (3) on the date~~  
 1060 ~~shown as received by the department.~~

1061 ~~(6) The department shall keep a record of each process~~  
 1062 ~~served pursuant to this section and record the time of and the~~  
 1063 ~~action taken regarding the service.~~

1064 ~~(7)~~ Any notice or demand on a limited liability company or  
 1065 registered foreign limited liability company under this chapter  
 1066 may be given or made to any member of a member-managed limited  
 1067 liability company or registered foreign limited liability  
 1068 company or to any manager of a manager-managed limited liability  
 1069 company or registered foreign limited liability company; to the  
 1070 registered agent of the limited liability company or registered  
 1071 foreign limited liability company at the registered office of  
 1072 the limited liability company or registered foreign limited  
 1073 liability company in this state; or to any other address in this

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1074 state which ~~that~~ is in fact the principal office of the limited  
 1075 liability company or registered foreign limited liability  
 1076 company in this state.

1077 (3) A registered series of a foreign series limited  
 1078 liability company may be served in the same manner as a  
 1079 registered limited liability company.

1080 (4) ~~(8)~~ This section does not affect the right to serve  
 1081 process, give notice, or make a demand in any other manner  
 1082 provided by law.

1083 Section 20. Subsection (1) of section 605.09091, Florida  
 1084 Statutes, is amended to read:

1085 605.09091 Judicial review of denial of reinstatement.-

1086 (1) If the department denies a foreign limited liability  
 1087 company's application for reinstatement after revocation of its  
 1088 certificate of authority, the department must ~~shall~~ serve the  
 1089 foreign limited liability company, pursuant to s. 605.0117(2) ~~s.~~  
 1090 ~~605.0117(7)~~, with a written notice that explains the reason or  
 1091 reasons for the denial.

1092 Section 21. Paragraphs (f) and (g) of subsection (1) and  
 1093 subsection (2) of section 605.0910, Florida Statutes, are  
 1094 amended to read:

1095 605.0910 Withdrawal and cancellation of certificate of  
 1096 authority.-

1097 (1) To cancel its certificate of authority to transact  
 1098 business in this state, a foreign limited liability company must  
 1099 deliver to the department for filing a notice of withdrawal of  
 1100 certificate of authority. The certificate of authority is  
 1101 canceled when the notice becomes effective pursuant to s.  
 1102 605.0207. The notice of withdrawal of certificate of authority

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must be signed by an authorized representative and state the following:

(f) A mailing address and an e-mail address to which a party seeking to effectuate service of process ~~the department~~ may ~~send mail~~ a copy of any process served on the Secretary of State under paragraph (e).

(g) A commitment to notify the department in the future of any change in its mailing address or e-mail address.

(2) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary of State using the procedures set forth in s. 48.161 under this section is service on the foreign limited liability company. ~~Upon receipt of the process, the department shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under paragraph (1)(f).~~

Section 22. Paragraph (f) of subsection (2) of section 605.1045, Florida Statutes, is amended to read:

605.1045 Articles of conversion.—

(2) The articles of conversion must contain the following:

(f) If the converted entity is a foreign entity that does not have a certificate of authority to transact business in this state, a mailing address and an e-mail address to which a party seeking to effectuate service of process ~~the department~~ may send any process served on the Secretary of State ~~department~~ pursuant to s. 605.0117 and chapter 48.

Section 23. Section 607.0504, Florida Statutes, is amended to read:

607.0504 Serving Service of process, giving notice, or making a demand on a corporation.—

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(1) A corporation may be served with process required or authorized by law in accordance with s. 48.081 and chapter 48 or chapter 49 by serving on its registered agent.

~~(2) If a corporation ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, the process required or permitted by law may instead be served on the chair of the board, the president, any vice president, the secretary, or the treasurer of the corporation at the principal office of the corporation in this state.~~

~~(3) If the process cannot be served on a corporation pursuant to subsection (1) or subsection (2), the process may be served on the secretary of state as an agent of the corporation.~~

~~(4) Service of process on the secretary of state shall be made by delivering to and leaving with the department duplicate copies of the process.~~

~~(5) Service is effectuated under subsection (3) on the date shown as received by the department.~~

~~(6) The department shall keep a record of each process served on the secretary of state pursuant to this subsection and record the time of and the action taken regarding the service.~~

~~(7)~~ Any notice or demand on a corporation under this chapter may be given or made to the chair of the board, the president, any vice president, the secretary, or the treasurer of the corporation; to the registered agent of the corporation at the registered office of the corporation in this state; or to any other address in this state which ~~that~~ is in fact the principal office of the corporation in this state.

(3) (8) This section does not affect the right to serve process, give notice, or make a demand in any other manner

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provided by law.

Section 24. Subsection (1) of section 607.1423, Florida Statutes, is amended to read:

607.1423 Judicial review of denial of reinstatement.—

(1) If the department denies a corporation's application for reinstatement after administrative dissolution, the department ~~must~~ shall serve the corporation under ~~either~~ s. 607.0504(1) ~~or (2)~~ with a written notice that explains the reason or reasons for denial.

Section 25. Section 607.15101, Florida Statutes, is amended to read:

607.15101 Serving ~~Service of~~ process, giving notice, or making a demand on a foreign corporation.—

(1) A foreign corporation may be served with process required or authorized by law in accordance with s. 48.081 and chapter 48 or chapter 49 ~~by serving on its registered agent.~~

~~(2) If a foreign corporation ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, the process required or permitted by law may instead be served on the chair of the board, the president, any vice president, the secretary, or the treasurer of the foreign corporation at the principal office of the foreign corporation in this state.~~

~~(3) If the process cannot be served on a foreign corporation pursuant to subsection (1) or subsection (2), the process may be served on the secretary of state as an agent of the foreign corporation.~~

~~(4) Service of process on the secretary of state may be made by delivering to and leaving with the department duplicate~~

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~~copies of the process.~~

~~(5) Service is effectuated under subsection (2) on the date shown as received by the department.~~

~~(6) The department shall keep a record of each process served on the secretary of state pursuant to this section and record the time of and the action taken regarding the service.~~

~~(7)~~ Any notice or demand on a foreign corporation under this chapter may be given or made ~~+~~ to the chair of the board, the president, any vice president, the secretary, or the treasurer of the foreign corporation; to the registered agent of the foreign corporation at the registered office of the foreign corporation in this state; or to any other address in this state which ~~that~~ is in fact the principal office of the foreign corporation in this state.

(3)(b) This section does not affect the right to serve process, give notice, or make a demand in any other manner provided by law.

Section 26. Paragraphs (f) and (g) of subsection (1) and subsection (2) of section 607.1520, Florida Statutes, are amended to read:

607.1520 Withdrawal and cancellation of certificate of authority for foreign corporation.—

(1) To cancel its certificate of authority to transact business in this state, a foreign corporation must deliver to the department for filing a notice of withdrawal of certificate of authority. The certificate of authority is canceled when the notice of withdrawal becomes effective pursuant to s. 607.0123. The notice of withdrawal of certificate of authority must be signed by an officer or director and state the following:

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1219 (f) A mailing address and an e-mail address to which a  
 1220 party seeking to effectuate service of process ~~the secretary of~~  
 1221 ~~state may send mail~~ a copy of any process served on the  
 1222 Secretary of State under paragraph (e).  
 1223 (g) A commitment to notify the department in the future of  
 1224 any change in its mailing address or e-mail address.  
 1225 (2) After the withdrawal of the foreign corporation is  
 1226 effective, service of process on the Secretary of State using  
 1227 the procedures in s. 48.161 ~~under this section~~ is service on the  
 1228 foreign corporation. ~~Upon receipt of the process, the secretary~~  
 1229 ~~of state shall mail a copy of the process to the foreign~~  
 1230 ~~corporation at the mailing address set forth under paragraph~~  
 1231 ~~(1)(f).~~  
 1232 Section 27. Subsections (1) and (3) of section 617.0504,  
 1233 Florida Statutes, are amended to read:  
 1234 617.0504 Serving ~~Service of~~ process, giving notice, or  
 1235 making a demand on a corporation.—  
 1236 (1) Process against any corporation may be served in  
 1237 accordance with s. 48.081 and chapter 48 or chapter 49.  
 1238 (3) This section does not prescribe the only means, or  
 1239 necessarily the required means, of serving process, giving  
 1240 notice, or making a demand on a corporation.  
 1241 Section 28. Section 617.1510, Florida Statutes, is amended  
 1242 to read:  
 1243 617.1510 Serving ~~Service of~~ process, giving notice, or  
 1244 making a demand on a foreign corporation.—  
 1245 (1) Process against a foreign corporation may be served in  
 1246 accordance with s. 48.081 and chapter 48 or chapter 49 ~~The~~  
 1247 ~~registered agent of a foreign corporation authorized to conduct~~

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1248 ~~its affairs in this state is the corporation's agent for service~~  
 1249 ~~of process, notice, or demand required or permitted by law to be~~  
 1250 ~~served on the foreign corporation.~~  
 1251 (2) ~~A foreign corporation may be served by registered or~~  
 1252 ~~certified mail, return receipt requested, addressed to the~~  
 1253 ~~secretary of the foreign corporation at its principal office~~  
 1254 ~~shown in its application for a certificate of authority or in~~  
 1255 ~~its most recent annual report if the foreign corporation:~~  
 1256 ~~(a) Has no registered agent or its registered agent cannot~~  
 1257 ~~with reasonable diligence be served;~~  
 1258 ~~(b) Has withdrawn from conducting its affairs in this state~~  
 1259 ~~under s. 617.1520; or~~  
 1260 ~~(c) Has had its certificate of authority revoked under s.~~  
 1261 ~~617.1531.~~  
 1262 ~~(3) Service is perfected under subsection (2) at the~~  
 1263 ~~earliest of:~~  
 1264 ~~(a) The date the foreign corporation receives the mail;~~  
 1265 ~~(b) The date shown on the return receipt, if signed on~~  
 1266 ~~behalf of the foreign corporation; or~~  
 1267 ~~(c) Five days after its deposit in the United States mail,~~  
 1268 ~~as evidenced by the postmark, if mailed postpaid and correctly~~  
 1269 ~~addressed.~~  
 1270 ~~(4) This section does not prescribe the only means, or~~  
 1271 ~~necessarily the required means, of serving a foreign~~  
 1272 ~~corporation. Process against any foreign corporation may also be~~  
 1273 ~~served in accordance with chapter 48 or chapter 49.~~  
 1274 ~~(5)~~ Any notice to or demand on a foreign corporation made  
 1275 pursuant to this act may be made in accordance with the  
 1276 procedures for notice to or demand on domestic corporations

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

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1277 under s. 617.0504.

1278 Section 29. Subsections (2) and (3) of section 617.1520,  
1279 Florida Statutes, are amended to read:

1280 617.1520 Withdrawal of foreign corporation.—

1281 (2) A foreign corporation authorized to conduct its affairs  
1282 in this state may apply for a certificate of withdrawal by  
1283 delivering an application to the Department of State for filing.  
1284 The application must ~~shall~~ be made on forms prescribed and  
1285 furnished by the Department of State and must ~~shall~~ set forth  
1286 all of the following:

1287 (a) The name of the foreign corporation and the  
1288 jurisdiction under the law under ~~of~~ which it is incorporated.†  
1289 (b) That it is not conducting its affairs in this state and  
1290 that it surrenders its authority to conduct its affairs in this  
1291 state.†

1292 (c) That it revokes the authority of its registered agent  
1293 to accept service on its behalf and appoints the Secretary of  
1294 State ~~Department of State~~ as its agent for service of process  
1295 based on a cause of action arising during the time it was  
1296 authorized to conduct its affairs in this state.†

1297 (d) A mailing address and an e-mail address to which a  
1298 party seeking to effectuate service of process ~~the Department of~~  
1299 ~~State~~ may send mail a copy of any process served on it under  
1300 paragraph (c).† ~~and~~

1301 (e) A commitment to notify the Department of State in the  
1302 future of any change in its mailing address or e-mail address.

1303 (3) After the withdrawal of the corporation is effective,  
1304 service of process in accordance with s. 48.161 ~~on the~~  
1305 ~~Department of State under this section~~ is service on the foreign

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1306 corporation. ~~Upon receipt of the process, the Department of~~  
1307 ~~State shall mail a copy of the process to the foreign~~  
1308 ~~corporation at the mailing address set forth under subsection~~  
1309 ~~(2).~~

1310 Section 30. Section 620.1117, Florida Statutes, is amended  
1311 to read:

1312 620.1117 Serving ~~Service of~~ process, giving notice, or  
1313 making a demand on a limited partnership or a foreign limited  
1314 partnership.—

1315 (1) Service of process on a limited partnership or foreign  
1316 limited partnership must be made in accordance with s. 48.061  
1317 and chapter 48 or chapter 49 ~~A registered agent appointed by a~~  
1318 ~~limited partnership or foreign limited partnership is an agent~~  
1319 ~~of the limited partnership or foreign limited partnership for~~  
1320 ~~service of any process, notice, or demand required or permitted~~  
1321 ~~by law to be served upon the limited partnership or foreign~~  
1322 ~~limited partnership.~~

1323 (2) Any notice or demand on a limited partnership or  
1324 foreign limited partnership under this chapter may be given or  
1325 made to any general partner of the limited partnership or  
1326 foreign limited partnership, to the registered agent of the  
1327 limited partnership or foreign limited partnership at the  
1328 registered office in this state, or to any other address in this  
1329 state which is in fact the principal office of the limited  
1330 partnership or foreign limited partnership in this state ~~If a~~  
1331 ~~limited partnership or foreign limited partnership does not~~  
1332 ~~appoint or maintain a registered agent in this state or the~~  
1333 ~~registered agent cannot with reasonable diligence be found at~~  
1334 ~~the address of the registered office, the Department of State~~

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~~shall be an agent of the limited partnership or foreign limited partnership upon whom process, notice, or demand may be served.~~

~~(3) Service of any process, notice, or demand on the Department of State may be made by delivering to and leaving with the Department of State duplicate copies of the process, notice, or demand.~~

~~(4) Service is effected under subsection (3) upon the date shown as having been received by the Department of State.~~

~~(5) The Department of State shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.~~

~~(6)~~ This section does not affect the right to serve process, give notice, or make a demand in any other manner provided by law.

Section 31. Subsection (5) of section 620.1907, Florida Statutes, is amended to read:

620.1907 Cancellation of certificate of authority; effect of failure to have certificate.—

(5) If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, it may be served under s. 48.061(5)(b) ~~the foreign limited partnership shall appoint the Department of State as its agent for service of process for rights of action arising out of the transaction of business in this state.~~

Section 32. Subsections (3) and (4) of section 620.2105, Florida Statutes, are amended to read:

620.2105 Effect of conversion.—

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to

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enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the Secretary of State ~~Department of State~~ as its agent for service of process for purposes of enforcing an obligation under this subsection and any appraisal rights of limited partners under ss. 620.2113-620.2124 to the extent applicable to the conversion. Service on the Secretary of State ~~Department of State~~ under this subsection is made in the same manner and with the same consequences as in ss. 48.161 and 620.1117 ~~ss. 620.1117(3) and (4).~~

(4) A copy of the statement of conversion, certified by the Secretary of State ~~Department of State~~, may be filed in any county of this state in which the converting organization holds an interest in real property.

Section 33. Subsection (2) of section 620.2109, Florida Statutes, is amended to read:

620.2109 Effect of merger.—

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state shall appoint the Secretary of State ~~Department of State~~ as its agent for service of process for the purposes of enforcing an obligation under this subsection and



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1393 any appraisal rights of limited partners under ss. 620.2113-  
 1394 620.2124 to the extent applicable to the merger. Service on the  
 1395 ~~Secretary of State Department of State~~ under this subsection is  
 1396 made in the same manner and with the same consequences as in ss.  
 1397 48.161 and 620.1117 ~~s. 620.1117(3) and (4).~~

1398 Section 34. Subsections (3) and (4) of section 620.8915,  
 1399 Florida Statutes, are amended to read:

1400 620.8915 Effect of conversion.—

1401 (3) A converted organization that is a foreign organization  
 1402 consents to the jurisdiction of the courts of this state to  
 1403 enforce any obligation owed by the converting partnership, if  
 1404 before the conversion the converting partnership was subject to  
 1405 suit in this state on the obligation. A converted organization  
 1406 that is a foreign organization and not authorized to transact  
 1407 business in this state shall appoint the Secretary of State  
 1408 ~~Department of State~~ as its agent for service of process for  
 1409 purposes of enforcing an obligation under this subsection.  
 1410 Service on the Secretary of State ~~Department of State~~ under this  
 1411 subsection ~~is shall be~~ made in the same manner and with the same  
 1412 consequences as provided in s. 48.161 ~~s. 48.181~~.

1413 (4) A copy of the certificate of conversion, certified by  
 1414 the Secretary of State ~~Department of State~~, may be filed in any  
 1415 county of this state in which the converting organization holds  
 1416 an interest in real property.

1417 Section 35. Subsection (2) of section 620.8919, Florida  
 1418 Statutes, is amended to read:

1419 620.8919 Effect of merger.—

1420 (2) A surviving organization that is a foreign organization  
 1421 consents to the jurisdiction of the courts of this state to

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1422 enforce any obligation owed by a constituent organization, if  
 1423 before the merger the constituent organization was subject to  
 1424 suit in this state on the obligation. A surviving organization  
 1425 that is a foreign organization and not authorized to transact  
 1426 business in this state shall appoint the Secretary of State  
 1427 ~~Department of State~~ as its agent for service of process pursuant  
 1428 to s. 48.161 ~~the provisions of s. 48.181~~.

1429 Section 36. Except as otherwise expressly provided in this  
 1430 act and except for this section, which shall take effect upon  
 1431 this act becoming a law, this act shall take effect January 2,  
 1432 2023.



**SENATOR JENNIFER BRADLEY**  
5th District

## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Education  
Ethics and Elections  
Judiciary  
Reapportionment

### SELECT SUBCOMMITTEE:

Select Subcommittee on Congressional  
Reapportionment, *Chair*

### JOINT COMMITTEES:

Joint Legislative Auditing Committee  
Joint Select Committee on Collective Bargaining

February 2, 2022

Senator Kathleen Passidomo, Chair  
Senate Committee on Rules  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/CS/SB 1062 be placed on the agenda of the Committee on Rules at your earliest convenience. The bill codifies caselaw to clarify service of process requirements and sets forth the manner in which service of process is made in eviction actions, among other provisions. These changes were recommended by various sections of the Florida Bar and Florida Justice Association.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Bradley".

Jennifer Bradley

cc: Mr. John Phelps, Staff Director  
Ms. Cynthia Futch, Administrative Assistant

### REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

2/10/22

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

1062

Bill Number or Topic

**Rules**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Lisa Hurley Phone 850.224.5081

Address 311 E. Park Ave. Email lhurley@smithbryanandmyers.com  
Street

Tallahassee Florida 32301  
City State Zip

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

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

**Family Law Section of the Florida  
Bar**

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

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

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

S-001 (08/10/2021)

February 10, 2022

Meeting Date

Rules Committee

Committee

The Florida Senate

## APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB 1062

Bill Number or Topic

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Phone 850-251-4300

Address 119 S. Monroe St., Ste. 200

Email adl@Mhdfirm.com

Street

Tallahassee

City

FL

State

32301

Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

### PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

The Business Law Section of The Florida  
Bar

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

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

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1140

INTRODUCER: Banking and Insurance Committee; Regulated Industries Committee and Senator Perry

SUBJECT: Alarm Systems

DATE: February 8, 2022

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Kraemer | Imhof          | RI        | <b>Fav/CS</b>    |
| 2. | Arnold  | Knudson        | BI        | <b>Fav/CS</b>    |
| 3. | Kraemer | Phelps         | RC        | <b>Favorable</b> |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1140 reduces the initial training and continuing education requirements for fire alarm system agents with certain specialized certifications or training relating to fire alarm systems. Eligible agents need only meet a requirement for two hours of training in false alarms prevention required by s. 489.5185(1)(b), F.S.

The bill amends the definition of a low-voltage alarm system project to include video cameras and closed-circuit television (CCTV) systems used to signal or detect a burglary, fire, robbery, or medical emergency. Such systems use a closed circuit for the signal rather than the typical open transmission used in broadcast television.

The bill establishes an expedited permitting process for fire alarm system alterations, requiring the issuance, in person or electronically, of permits in specified circumstances.

The bill is effective July 1, 2022.

**II. Present Situation:**

**Licensed Alarm System Contractors**

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the

applicable trade, and have been tested on technical and business matters.<sup>1</sup> The Electrical Contractors' Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.<sup>2</sup>

An electrical contractor is a person whose business includes the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, and appliances, and any related part, which generates, transmits, or uses electrical energy, in compliance with applicable plans, specifications, codes, laws, and regulations.<sup>3</sup> The term "electrical contractor" also includes any person, firm, or corporation that engages in the business of electrical contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.<sup>4</sup>

An alarm system is any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.<sup>5</sup> Licensure of electrical and alarm systems contractors is required, and applicants must have sufficient technical experience and be tested on technical and business matters.

An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.<sup>6</sup> The term "alarm system contractor" also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract, or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.<sup>7</sup>

An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an "alarm system contractor I, including fire alarm systems;" the practice area of an "alarm system contractor II" is identical except that it does not include fire alarm systems.<sup>8</sup>

The terms "registered alarm system contractor," and "registered electrical contractor" mean those contractors who have registered with the DBPR and met competency requirements for their trade category in the particular jurisdiction for which the registration is issued. Registered contractors may contract only in the jurisdiction for which the registration is issued.<sup>9</sup>

The term "certification" means the act by a contractor obtaining or holding a geographically unlimited certificate of competency from the DBPR.<sup>10</sup> When an alarm system contractor is certified, the contractor possesses a certificate of competency, with some limitations as to the

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<sup>1</sup> See s. 489.501, F.S.

<sup>2</sup> Section 489.507, F.S.

<sup>3</sup> See s. 489.505(12), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 489.505(1), F.S.

<sup>6</sup> See s. 489.505(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See ss. 489.505(16), (21), and (22), F.S.

<sup>10</sup> See ss. 489.505(4), (5), and (6), F.S.

scope of work that may be undertaken, without any mandatory licensure requirement.<sup>11</sup> The term “certified electrical contractor” means an electrical contractor who possesses a certificate of competency. To be certified a person must be 18 years of age, pass the certification examination, be of good moral character, and meet the eligibility requirements of s. 489.511(1)(b)3., F.S.<sup>12</sup>

Unless an exemption applies, the term “contracting” means engaging in business as a contractor or performing electrical or alarm work for compensation and includes, but is not limited to, performance of the work that may be performed by electrical or alarm system contractors.<sup>13</sup> The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure.<sup>14</sup>

The term “specialty contractor” means a contractor whose scope of practice is limited to a specific category of electrical or alarm system contracting, such as residential electrical contracting, maintenance of electrical fixtures, and fabrication, erection, installation, and maintenance of electrical advertising signs.<sup>15</sup>

Section 489.514, F.S., authorizes the ECLB to grandfather certain applicants for registered contract status, but only if application was made before November 1, 2021; under this provision, which now appears obsolete, the ECLB is required to certify an electrical, electrical specialty, or alarm system contractor to engage in the specified trade category throughout the state, upon:

- Receipt of a completed application;
- Payment of the appropriate fee;<sup>16</sup> and
- Evidence that he or she qualifies for the certification in a trade category based on:
  - Having a valid registered local license;
  - Passing an approved written examination;
  - Having a minimum of five years’ contracting experience in the applicable trade category (with an active license and excluding probationary periods);

---

<sup>11</sup> See s. 489.505(7), F.S., which describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is an acronym for “root mean square,” a statistical term defined as the square root of mean square, or effective voltage. See <http://www.learningaboutelectronics.com/Articles/RMS-voltage-and-current-explained.php#:~:text=RMS%20Voltage%20and%20Current-%20Explained.%20RMS,%20or%20root,power%20dissipation,%20in%20circuit,%20as%20this%20AC%20voltage.> (last visited January 27, 2022).

<sup>12</sup> Section 489.511(1)(b)3., F.S., provides experience requirements for certification.

<sup>13</sup> See s. 489.505(9), F.S.; see also, ss. 489.505(2) and (12), F.S., for the various services that may be performed, and ss. 489.503(1) through (24), F.S., for the persons and types of work that are exempted from the term “contracting.”

<sup>14</sup> See s. 489.505(9), F.S.

<sup>15</sup> See s. 489.505(19), F.S.

<sup>16</sup> The ECLB has established a \$196 fee for applications for registered contractor certification. See s. 489.109, F.S., and Fla. Admin. Code R. ch. 61G6-8.

- Never having had a contractor's license revoked, and during the last five years, not having had a suspended license or been assessed a fine in excess of \$500; and
- Meeting all required insurance and financial responsibility requirements.<sup>17</sup>

### ***Mandatory Disclosure of Contractor Registration or Certification Numbers***

Under s. 489.521(7), F.S., each registered or certified contractor must state the appropriate registration or certification number on each building permit application and each issued and recorded building permit. All city and county building departments must require, as a condition for building permit issuance, that the contractor applying for the permit verify his or her registration or certification as an electrical or alarm system contractor in the state.<sup>18</sup>

A contractor's registration or certification number must also be stated in each offer of services, business proposal, or advertisement, regardless of medium, used by that contractor; however, the term "advertisement" does not include business stationery or promotional novelties such as balloons, pencils, trinkets, or articles of clothing; this requirement does not apply to a newspaper, magazine, flyer, billboard, phone book, Internet, or broadcast advertisement for alarm system contracting as long as the contractor maintains a website that includes the number and the advertisement directs consumers to the website.<sup>19</sup>

The ECLB must assess a fine of not less than \$100 or issue a citation to any contractor who fails to include that contractor's certification or registration number when submitting an advertisement for publication, broadcast, or printing.<sup>20</sup> In addition, a person who claims in any advertisement to be a certified or registered contractor, but who does not hold a valid state certification or registration, commits a misdemeanor of the second degree.<sup>21</sup>

### **Fire Alarm Systems Agents; Licensing; Continuing Education Requirements**

Section 489.505(28), F.S., defines "fire alarm system agent" as a person:

- Who is employed by a licensed fire alarm contractor or certified unlimited electrical contractor;
- Who is performing duties that are part of fire alarm system contracting requiring certification; and
- Whose specific duties include any of the following: altering, installing, maintaining, moving, repairing, replacing, servicing, selling, or monitoring a fire alarm system for compensation.

The provisions of s. 489.5185, F.S., include the requirements for fire alarm system agents, who may not be employed unless the person is at least 18 years of age, provides proof of a minimum of 14 hours of initial training, has not been convicted of a crime within the last three years

<sup>17</sup> See s. 489.515(1)(b), F.S., which provides that an applicant must submit satisfactory evidence of workers' compensation insurance or an acceptable exemption issued by the DBPR, public liability and property damage insurance in amounts determined by the ECLB, and evidence of financial responsibility, credit, and business reputation of either the contractor or the business sought to be qualified for certification.

<sup>18</sup> See s. 553.521(7)(a), F.S.

<sup>19</sup> See s. 553.521(7)(b), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> As to a misdemeanor of the second degree, s. 775.082, F.S., provides such offense is punishable by a term of imprisonment not to exceed 60 days, and s. 775.083, F.S., provides such offense is punishable by a fine not to exceed \$500.



(related to the business of fire alarms), has a background check, and has not been convicted of a crime for controlled substances within the last three years.

The initial training for a fire alarm system agent must include basic fire alarm system technology in addition to related training in National Fire Protection Association (NFPA) codes and standards and access control training, with at least 2 hours of training in the prevention of false alarms.

A certified electrical contractor, a certified fire alarm system contractor, a registered fire alarm system contractor, a journeyman electrician licensed by any local jurisdiction, or an alarm technician licensed by a local jurisdiction that requires an examination and experience or training as licensure qualifications, is not required to complete the training required for fire alarm system agents, and a registered electrical contractor is not required to complete that training, provided he or she is only doing electrical work up to the alarm panel.<sup>22</sup>

Section 489.5185(2)(c), F.S., provides that a nonsupervising employee working as a helper or apprentice under the direct, onsite, continuous supervision of a certified or registered electrical contractor, a certified or registered fire alarm system contractor, a journeyman electrician licensed by any local jurisdiction, an alarm technician licensed by a local jurisdiction that requires an examination and experience or training as licensure qualifications, or a qualified fire alarm system agent, is not required to complete any fire alarm system training and is not required to be 18 years of age or older. Persons who perform only monitoring<sup>23</sup> are not required to complete the training required for fire alarm system agents.

Each fire alarm system agent must receive six hours of continuing education on fire alarm system installation and repair and false alarm prevention every two years, from a board-approved sponsor of training and through a board-approved training course.<sup>24</sup> Failure to comply with any of the provisions of s. 489.5185, F.S., is grounds for disciplinary action against the contractor as set forth in s. 489.533, F.S.<sup>25</sup>

Alarm system contractors may also hold certificates of competency from the DBPR, which are geographically unlimited.<sup>26</sup> Holders of those certificates are certified alarm system contractors, and the scope of certification is limited to specific alarm circuits and equipment.<sup>27</sup> There is no mandatory licensure requirement created by the availability of certification.<sup>28</sup>

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<sup>22</sup> See Section 489.5185(2), F.S.

<sup>23</sup> See *supra* note 15.

<sup>24</sup> See Section 489.5185(5), F.S.

<sup>25</sup> See Section 489.5185(6), F.S.

<sup>26</sup> Sections 489.505(4) and 489.505(5), F.S.,

<sup>27</sup> Section 489.505(7), F.S., describes the limitations as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks.

<sup>28</sup> *Id.*

## National Institute of Certification in Engineering Technologies

The National Institute of Certification in Engineering Technologies (NICET), established in 1961, certifies engineering technicians and technologists, and more than 148,000 technicians and technologists have received NICET certification since then.<sup>29</sup> Certification programs include those for:<sup>30</sup>

- Fire Alarm Systems;
- Inspection and Testing of Fire Alarm Systems;
- Inspection and Testing of Water-based Systems;
- Special Hazards Systems; and
- Water-based Systems Layout.

Certification requirements exist for four levels of Fire Alarm System (FAS) certification<sup>31</sup> and two levels of Inspection and Testing of Fire Alarm Systems (I&TFAS) certification.<sup>32</sup>

For a Level II Fire Alarm System certification, a person must:<sup>33</sup>

- Pass Level I and Level II exams;
- Meet all Levels I and II performance measures; and
- Have at least two years of fire detection and signaling systems experience, which must include at least 12 months of fire alarm systems experience, including alarm and detection, notification, sprinkler monitoring, and interfaces and controls for agent releasing suppression systems.

For a Level II Inspection and Testing of Fire Alarm Systems certification, a person must:<sup>34</sup>

- Pass Level 1 and Level II exam; and
- Meet all Levels I and II performance measures; and
- Have at least 18 months of experience in the inspection and testing of fire alarm and suppression systems.

Recertification is required every three years, by demonstrating continuing professional development.<sup>35</sup>

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<sup>29</sup> See NICET, *About Us*, <https://www.nicet.org/about-us/> (last visited January 27, 2022).

<sup>30</sup> See NICET, *Certification Programs*, at <https://www.nicet.org/certification-programs/> (last visited January 27, 2022).

<sup>31</sup> See NICET, *Certification Programs, Fire Alarm Systems*, at <https://www.nicet.org/certification-programs/electrical-and-mechanical-systems/fire-alarm-systems/> (last visited January 27, 2022).

<sup>32</sup> See NICET, *Certification Programs, FAS Exams and I&TFAS Exam Credits*, at <https://www.nicet.org/certification-programs/electrical-and-mechanical-systems/inspection-and-testing-of-fire-alarm-systems/fas-exams-and-i-tfas-exam-credits/> (last visited January 27, 2022).

<sup>33</sup> See NICET, *Certification Requirements*, <https://www.nicet.org/certification-programs/electrical-and-mechanical-systems/fire-alarm-systems/certification-requirements/> (last visited on January 27, 2022).

<sup>34</sup> See NICET, *Certification Requirements*, <https://www.nicet.org/certification-programs/electrical-and-mechanical-systems/inspection-and-testing-of-fire-alarm-systems/certification-requirements/> (last visited January 27, 2022).

<sup>35</sup> See NICET, *Recertify*, <https://www.nicet.org/recertify/> (last visited January 27, 2022).

## Electronic Security Association

The Electronic Security Association (ESA), established in 1948 to represent the electronic security and life safety industry, asserts it is the largest trade association in the United States, with more than 500,000 industry professionals employed by ESA member companies.<sup>36</sup>

Certification programs include:<sup>37</sup>

- Certified Alarm Technician Level I;
- Certified Fire Alarm Technician Level II Fire;
- Certified Fire Alarm Designer Level III Fire; and
- Certified Residential Fire Alarm Inspector.

For certification as a Fire Alarm Technician Level II Fire, a person must:<sup>38</sup>

- Be certified as an ESA Alarm Technician Level I or higher;
- Have 24 months of work history or have been certified as an ESA Alarm Technician Level I for 24 months or more; and
- Have completed the following two courses within the previous five years:
  - Fire Alarm Installation Methods course and pass the examination.
  - Life Safety Code course or International Building Code course and passed the associated examination.

For certification as a Fire Alarm Designer Technician Level III, a person must:<sup>39</sup>

- Be certified as an ESA Fire Alarm Technician Level II;
- Have 60 months of work history in the field of fire alarms installation, inspection, testing, commissioning, project managing, plan preparation, or supervision;
- Have a personal recommendation from a professional with the professionalism, ethical standards, and technical abilities of the applicant (e.g., from licensed engineers, registered land surveyors, certified fire engineers/designers); and
- Have completed the Fire Alarm Designer course and passed the associated examination.

Recertification is required every two years, by completing 24 hours of continuing education approved by the ESA and other continuing education that may qualify.<sup>40</sup>

## The Florida Building Code

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private

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<sup>36</sup> See ESA, *About Us*, <https://esaweb.org/about/> (last visited January 27, 2022).

<sup>37</sup> See ESA, *ESA Certifications for Security, Sales and Fire*, <https://esaweb.org/training/certifications/certification-types/> (last visited January 27, 2022).

<sup>38</sup> ESA, *ESA Certified Fire Alarm Technician Level 2 (CFAT)*, <https://esaweb.org/training/certifications/cfat/> (last visited January 27, 2022).

<sup>39</sup> ESA, *Certified Fire Alarm Designer (CFAD) Level III Fire Certification*, <https://esaweb.org/training/certifications/cfad/> (last visited January 27, 2022).

<sup>40</sup> ESA, *How to Renew Your ESA Certification*, <https://esaweb.org/training/certification-renewal/#qualifying> (last visited January 27, 2022).

buildings, structures, and facilities in the state.<sup>41</sup> The building code must be applied, administered, and enforced uniformly and consistently throughout the state.<sup>42</sup> The building code is adopted, updated, interpreted, and maintained by the Florida Building Commission (commission), which is housed within the DBPR, but is enforced by authorized state and local government agencies.<sup>43</sup> The commission adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.<sup>44</sup>

Violations of the building code are enforced by the appropriate enforcing agency or local government pursuant to s. 553.79, F.S., relating to required permits, and s. 553.80, F.S., relating to enforcement of the building code. Each local government and each legally constituted enforcement district with statutory authority must regulate building construction and, if authorized in legislation, each state agency, must enforce the building code by seeking injunctive relief from any court to address noncompliance with the building code.<sup>45</sup>

### ***Fire Alarm Permit Applications to Local Enforcement Agencies***

Under Section 553.7921, F.S., a uniform fire alarm permit application with specified supporting documentation must be filed before installing or replacing a fire alarm, or repairing an existing alarm system, if the local enforcement authority requires a plan review before conducting these activities. The uniform fire alarm permit application must be accompanied by specified supporting documentation, must be signed by the owner or an authorized representative, and the contractor or the contractor's agent, and may be filed electronically or by facsimile.<sup>46</sup>

### ***Low-voltage Alarm System Projects***

Section 553.793, F.S., relating to streamlined low-voltage alarm system installation permitting, provides that a "low-voltage alarm system project" is a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system that is hardwired and operating at low voltage, or a new or existing low-voltage electric fence. The term includes ancillary attached equipment, including but not limited to, home-automation equipment, thermostats, closed-circuit television systems, access controls, battery recharging devices, and video cameras. If the installation or replacement of a fire alarm requires a plan review by the local building code enforcement agency, streamlined permitting may not be used.<sup>47</sup>

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<sup>41</sup> See s. 553.72, F.S. Part IV of ch. 553, F.S., cited as the "Florida Building Codes Act." See s. 553.70, F.S. The Florida Building Code, 7th Edition, is available at [https://www.floridabuilding.org/bc/bc\\_default.aspx](https://www.floridabuilding.org/bc/bc_default.aspx) (last visited January 27, 2022).

<sup>42</sup> See s. 553.72(1), F.S.

<sup>43</sup> See s. 553.72(3), F.S.

<sup>44</sup> See s. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

<sup>45</sup> See s. 553.83, F.S.

<sup>46</sup> See s. 553.7921, F.S., which sets forth the Uniform Fire Alarm Permit Application.

<sup>47</sup> See s. 553.793(4), F.S.

Under streamlined permitting, licensed electrical and alarm system contractors are authorized to purchase uniform basic permit labels for low-voltage alarm system projects<sup>48</sup> from local governments by submitting identification of the contractor and proof of the contractor's registration or certification as a licensed contractor, without any other project information about a project.<sup>49</sup>

Contractors may purchase labels in bulk for one or more unspecified current or future projects, although the labels are valid only for one year and may be used only in the jurisdiction of the local government issuing the labels.<sup>50</sup> Local governments may not charge more than \$40 per permit label per project per unit, and may not require any other charge associated with the installation or replacement of a new or existing hardwired, low-voltage alarm system project.

Licensed electrical and alarm system contractors are not required to notify a local government before working on a low-voltage alarm system project, but first must post an unused permit label in a conspicuous place on the premises.<sup>51</sup> Within 14 days after completion of the project, the contractor must submit a Uniform Notice of a Low Voltage Alarm System Project to the local government; a local enforcement government may take disciplinary action against a contractor who fails to timely submit the required notice.<sup>52</sup>

A local enforcement agency may coordinate directly with the property owner or customer for inspection of a low-voltage alarm system project, and if a project fails an inspection, the contractor must take corrective action in order to pass the inspection.<sup>53</sup>

Another permit label is not required for any subsequent maintenance, inspection, or service of a low-voltage alarm system project that was initially permitted using the streamlined permitting process.<sup>54</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 489.5185, F.S., relating to firm alarm system agents, to reduce the number of required initial training hours and continuing education hours required for fire alarm system agents holding certain certifications. The requirement of 14 hours of initial training hours is reduced to two hours of board-approved training in the prevention of false alarms, if a person holds a current:

- National Institute of Certification in Engineering Technologies (NICET) Level II certification or higher in Fire Alarm Systems or Inspection and Testing of Fire Alarm Systems;
- Electronic Security Association (ESA) Certified Fire Alarm Technician certification; or
- ESA Certified Fire Alarm Designer certification.

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<sup>48</sup> Section 553.793(2), F.S., provides that permits are not required to install, maintain, inspect, replace, or service a wire alarm system or its components or attachments.

<sup>49</sup> See s. 553.793(5), F.S.

<sup>50</sup> See ss. 553.80 and 553.83, F.S.

<sup>51</sup> See ss. 553.793(6) and (7), F.S.

<sup>52</sup> See s. 553.793(7), F.S.

<sup>53</sup> See s. 553.793(9), F.S.

<sup>54</sup> See s. 553.791(11), F.S.

Under the bill, the requirement of six hours of board-approved continuing education every two years on fire alarm system installation and repair and false alarm prevention is also reduced for persons holding the above certifications, with such persons required to complete only two hours of continuing education prevention of false alarms every two years.

**Section 2** of the bill provides that a low-voltage alarm system project includes video cameras and closed-circuit television (CCTV) systems used to signal or detect a burglary, fire, robbery, or medical emergency. A CCTV system (i.e., video surveillance) transmits a signal to another location, but unlike broadcast television, the signal is sent via a closed circuit and not openly transmitted.<sup>55</sup> Currently, the definition of low-voltage alarm system project in s. 553.793(1)(b), F.S., includes video cameras and CCTV systems only as ancillary components or equipment attached to a low-voltage alarm system project.

**Section 3** of the bill creates s. 553.7932, F.S., to establish a simplified permitting process for certain limited fire alarm system alterations. The bill provides:

- The term “contractor” means a person qualified to engage in electrical or alarm system contracting pursuant to a certificate or registration issued by the DBPR under part II of ch. 489, F.S.
- The term “fire alarm system project” means a fire alarm system alteration of a total of 20 or fewer initiating devices and notification devices, or the installation or replacement of a fire communicator connected to an existing fire alarm control panel in an existing commercial, residential, apartment, cooperative, or cooperative building.
- A local enforcement agency:
  - May require a contractor to submit a completed application and payment, as a condition of obtaining a permit for an eligible fire alarm system project;
  - May not require a contractor to submit plans or specifications as a condition of obtaining a permit for an eligible fire alarm system project;
  - Must issue a permit for an eligible fire alarm system project in person or electronically;
  - Must require at least one inspection of an eligible fire alarm system project to ensure compliance with applicable codes and standards; if an eligible fire alarm system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.
- A contractor must keep a copy of the plans and specifications at a fire alarm system project worksite and make them available to the inspector at each inspection.

The bill is effective July 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

<sup>55</sup> See [https://en.wikipedia.org/wiki/Closed-circuit\\_television](https://en.wikipedia.org/wiki/Closed-circuit_television) (last visited January 27, 2022). The term “closed circuit television” is not defined in Florida law.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

According to the Department of Business and Professional Regulation (DBPR), the expenditures will be reduced for initial training and continuing education by applicants and licensees (with the required certifications) who seek or renew a fire alarm system agent license.<sup>56</sup> Further, the expedited permitting process for fire alarm system alterations may reduce the time and cost involved for such permits.<sup>57</sup>

**C. Government Sector Impact:**

According to the DBPR, local governments may experience increased expenditures to administer the required expedited permitting process created by the bill, but the amount cannot be determined at this time.<sup>58</sup>

The DBPR also notes that the Florida Building Commission must initiate rulemaking for:

- The regulation of closed circuit television systems used to signal or detect a burglary, fire, robbery, or medical emergency as low-voltage alarm systems projects; and
- The new expedited permitting process for eligible fire alarm system alarms.<sup>59</sup>

**VI. Technical Deficiencies:**

None.

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<sup>56</sup> See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for HB 669 (identical to SB 1144)* at 4 (Nov. 29, 2021) (on file with the Senate Committee on Regulated Industries).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 3.

<sup>59</sup> *Id.* at 6.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 489.5185 and 553.793.

This bill creates section 553.7932 of the Florida Statutes.

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

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

**CS/CS by Banking and Insurance on February 2, 2022:**

The committee substitute adds “video cameras” to the definition of “low-voltage alarm system project” in s. 553.793, F.S.

**CS by Regulated Industries on January 18, 2022:**

The committee substitute:

- Clarifies that the term “low-voltage alarm system project” includes ancillary components or equipment attached to a low-voltage alarm system or low-voltage electric fence.
- Significantly revises the simplified permitting process for eligible fire alarm system projects, to include:
  - Expanding the fire alarm system projects eligible for simplified permitting to include certain existing residential and cooperative buildings;
  - Providing that a local enforcement agency:
    1. May require a contractor to submit a completed application and payment, as a condition of obtaining a permit for an eligible fire alarm system project;
    2. May not require a contractor to submit plans or specifications as a condition of obtaining a permit for an eligible fire alarm system project;
    3. Must issue a permit for an eligible fire alarm system project in person or electronically;
    4. Must require at least one inspection of an eligible fire alarm system project to ensure compliance with applicable codes and standards;
- Requires a contractor, if an eligible fire alarm system project fails an inspection, to take corrective action as necessary to pass inspection; and
- Requires a contractor to keep a copy of the plans and specifications at the project worksite and make them available to the inspector at each inspection.

**B. Amendments:**

None.



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

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By the Committees on Banking and Insurance; and Regulated Industries; and Senator Perry

597-02659-22

20221140c2

A bill to be entitled

An act relating to alarm systems; amending s. 489.5185, F.S.; authorizing individuals with certain fire alarm certifications to complete a reduced number of training and continuing education hours for the prevention of false alarms; requiring the training and continuing education sponsors and courses to be approved by the Electrical Contractors' Licensing Board; amending s. 553.793, F.S.; revising the definition of the term "low-voltage alarm system project" to include certain video cameras and closed-circuit television systems; creating s. 553.7932, F.S.; defining terms; authorizing a local enforcement agency to require a contractor to submit certain documentation and payment for obtaining a permit for a fire alarm system project; prohibiting a local enforcement agency from requiring plans and specifications as a condition for obtaining a permit for a fire alarm system project; requiring a local enforcement agency to issue certain permits in person or electronically; requiring a local enforcement agency to perform at least one inspection for a fire alarm system project; requiring a contractor to keep certain documentation at a worksite for a fire alarm system project and make such documentation available for inspection; providing an effective date.

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

Page 1 of 4

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

597-02659-22

20221140c2

Section 1. Subsection (5) of section 489.5185, Florida Statutes, is amended, and paragraph (f) is added to subsection (2) of that section, to read:

489.5185 Fire alarm system agents.—

(2)

(f) If a person holds a current National Institute of Certification in Engineering Technologies (NICET) Level II certification or higher in Fire Alarm Systems or Inspection and Testing of Fire Alarm Systems, a current certification as an Electronic Security Association (ESA) Certified Fire Alarm Technician, or a current certification as an ESA Certified Fire Alarm Designer, he or she is required to complete only the 2 hours of training in the prevention of false alarms required by paragraph (1) (b) from a board-approved sponsor of training and through a board-approved training course.

(5) (a) Except as provided in paragraph (b), each fire alarm system agent must receive 6 hours of continuing education on fire alarm system installation and repair and false alarm prevention every 2 years from a board-approved sponsor of training and through a board-approved training course.

(b) A person holding a current NICET Level II certification or higher in Fire Alarm Systems or Inspection and Testing of Fire Alarm Systems, certification as an ESA Certified Fire Alarm Technician, or certification as an ESA Certified Fire Alarm Designer is required to complete only 2 hours of continuing education training in the prevention of false alarms every 2 years from a board-approved sponsor of training and through a board-approved training course.

Section 2. Paragraph (b) of subsection (1) of section

Page 2 of 4

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

597-02659-22

20221140c2

553.793, Florida Statutes, is amended to read:

553.793 Streamlined low-voltage alarm system installation permitting.—

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

(b) "Low-voltage alarm system project" means a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. 489.505, including video cameras and closed-circuit television systems used to signal or detect a burglary, fire, robbery, or medical emergency, that is hardwired and operating at low voltage, as defined in the National Electrical Code Standard 70, Current Edition, or a new or existing low-voltage electric fence. The term also includes, and ancillary components or equipment attached to ~~such~~ a low-voltage alarm system or low-voltage electric fence, including, but not limited to, home-automation equipment, thermostats, closed-circuit television systems, access controls, battery recharging devices, and video cameras.

Section 3. Section 553.7932, Florida Statutes, is created to read:

553.7932 Simplified permitting process for fire alarm system projects.—

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

(a) "Contractor" means a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489.

(b) "Fire alarm system project" means a fire alarm system alteration of a total of 20 or fewer initiating devices and

597-02659-22

20221140c2

notification devices, or the installation or replacement of a fire communicator connected to an existing fire alarm control panel in an existing commercial, residential, apartment, cooperative, or condominium building.

(2) (a) A local enforcement agency may require a contractor, as a condition of obtaining a permit for a fire alarm system project, to submit a completed application and payment.

(b) A local enforcement agency may not require a contractor to submit plans or specifications as a condition of obtaining a permit for a fire alarm system project.

(3) A local enforcement agency must issue a permit for a fire alarm system project in person or electronically.

(4) A local enforcement agency must require at least one inspection of a fire alarm system project to ensure compliance with applicable codes and standards. If a fire alarm system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

(5) A contractor must keep a copy of the plans and specifications at a fire alarm system project worksite and make such plans and specifications available to the inspector at each inspection.

Section 4. This act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kathleen Passidomo, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 4, 2022

---

I respectfully request that **CS/CS/Senate Bill #1140**, relating to Alarm Systems, be placed on the:

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

Statement of Intent:

SB 1140 streamlines the initial training and continuing education requirements for fire alarm system agents with a specialized certification, increases government efficiency as it relates to the permitting process for fire alarm systems projects, and makes technical changes relating to the installation of fire alarm systems.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

---

Senator Keith Perry  
Florida Senate, District 8

2/10/22

The Florida Senate

# APPEARANCE RECORD

1140

Meeting Date

Bill Number or Topic

Rules

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Eric Prutsman

8502241900

Name

Phone

Address

537 E Park Ave

eric@teamjb.com

Email

Street

Tallahassee

FL

32301

City

State

Zip

**Reset Form**

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

**Alarm Association of Florida**

☐

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

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

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

S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

Minor 2/10/22

Meeting Date

1140

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name Philip Swaderman

Phone \_\_\_\_\_

Address \_\_\_\_\_

Email \_\_\_\_\_

Street

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without compensation or sponsorship.

☒

I am a registered lobbyist, representing:

Americans for Prosperity

☐

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

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

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1240

INTRODUCER: Senator Harrell

SUBJECT: Mental Health of Students

DATE: February 8, 2022

REVISED: \_\_\_\_\_

| ANALYST   | STAFF DIRECTOR | REFERENCE | ACTION           |
|-----------|----------------|-----------|------------------|
| 1. Berger | Cox            | CF        | <b>Favorable</b> |
| 2. Jahnke | Bouck          | ED        | <b>Favorable</b> |
| 3. Berger | Phelps         | RC        | <b>Favorable</b> |

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**I. Summary:**

SB 1240 requires charter schools to report the removal of a student from school, school transportation, or a school-sponsored activity for an involuntary mental health examination. The bill provides that the Department of Education (the DOE) must share data comprised of both public and charter school reporting with the Department of Children and Families (the DCF) by July 1 of each year. The bill also provides specific data the DCF is required to analyze when preparing its biannual report on the involuntary examinations of minors.

The bill modifies requirements for annual mental health assistance allocation plans prepared by school districts by requiring districts to:

- Provide parents of students receiving mental health services with information regarding other services available through the student's school or local community-based mental health providers; and
- Provide other individuals living in the same household as a student receiving mental health services with information about other services the student may qualify for that would contribute to the student's improved well-being.

The bill will have an indeterminate fiscal impact on charter schools, the DOE, and the DCF. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

**II. Present Situation:**

**Baker Act**

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise

the state's mental health commitment laws.<sup>1</sup> The Act includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.<sup>2</sup>

### **Involuntary Examination and Receiving Facilities**

Individuals in an acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.<sup>3</sup> An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:<sup>4</sup>

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.<sup>5</sup>

The involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;<sup>6</sup>
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;<sup>7</sup> or
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.<sup>8</sup>

Involuntary patients must be taken to either a public or a private facility that has been designated by the DCF as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate

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<sup>1</sup> Sections 394.451-394.47891, F.S.

<sup>2</sup> Section 394.459, F.S.

<sup>3</sup> See Sections 394.4625 and 394.463, F.S.

<sup>4</sup> Section 394.463(1), F.S.

<sup>5</sup> Section 394.463(1), F.S.

<sup>6</sup> Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient's clinical record.

<sup>7</sup> Section 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.

<sup>8</sup> Section 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.



service provider.<sup>9</sup> A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.<sup>10</sup> Funds appropriated for Baker Act services may only be used to pay for services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and who are the least able to pay.<sup>11</sup> Currently, there are 128 Baker Act receiving facilities in the state, including 54 public receiving facilities and 68 private receiving facilities.<sup>12</sup>

Under the Baker Act, a receiving facility must examine an involuntary patient within 72 hours of arrival.<sup>13</sup> During those 72 hours, an involuntary patient must be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility to determine if the criteria for involuntary services are met.<sup>14</sup> If the patient is a minor, the examination must be initiated within 12 hours.<sup>15</sup>

Within that 72-hour examination period, or if the 72 hours ends on a weekend or holiday, no later than the next business day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to a placement as a voluntary patient and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.<sup>16</sup>

### **Mental Health Services for Students**

The DOE, through the Bureau of Exceptional Education and Student Services and the Office of Safe Schools, promotes a system of support, policies, and practices that focus on prevention and early intervention to improve student mental health and school safety. Florida law requires instructional personnel to teach comprehensive health education that addresses concepts of mental and emotional health, as well as substance use and abuse.<sup>17</sup>

Student Services personnel, which includes school psychologists, school social workers, and school counselors, are classified as instructional personnel responsible for advising students regarding personal and social adjustments, and provide direct and indirect services at the district and school level.<sup>18</sup> State funding for school districts' mental health services is provided primarily

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<sup>9</sup> Section 394.455(40), F.S. This term does not include a county jail.

<sup>10</sup> Section 394.455(38), F.S.

<sup>11</sup> Rule 65E-5.400(2), F.A.C.

<sup>12</sup> Hospitals can also be designated as public receiving facilities. The DCF *Designated Baker Act Receiving Facilities*, available at <https://www.myflfamilies.com/service-programs/samh/crisis-services/docs/baker/Baker%20Act%20Receiving%20Facilities.pdf> (last visited January 26, 2022).

<sup>13</sup> Section 394.463(2)(g), F.S.

<sup>14</sup> Section 394.463(2)(f), F.S.

<sup>15</sup> Section 394.463(2)(g), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 1003.42(2)(n), F.S.

<sup>18</sup> Section 1012.01(2)(b), F.S.

by legislative appropriations, the majority of which is distributed through an allocation through the Florida Education Finance Program (FEFP) to each district. In addition to the basic amount for current operations for the FEFP, the Legislature may appropriate categorical funding for specified programs, activities, or purposes.<sup>19</sup> Each district school board must include the amount of categorical funds as a part of the district annual financial report to the DOE and the DOE must submit a report to the Legislature that identifies by district and by categorical fund the amount transferred and the specific academic classroom activity for which the funds were spent.<sup>20</sup>

The law allows district school boards and state agencies administering children's mental health funds to form a multiagency network to provide support for students with severe emotional disturbance.<sup>21</sup> The program goals for each component of the multiagency network are to:

- Enable students with severe emotional disturbance to learn appropriate behaviors, reduce dependency, and fully participate in all aspects of school and community living;
- Develop individual programs for students with severe emotional disturbance, including necessary educational, residential, and mental health treatment services;
- Provide programs and services as close as possible to the student's home in the least restrictive manner consistent with the student's needs; and
- Integrate a wide range of services necessary to support students with severe emotional disturbances and their families.<sup>22</sup>

The DOE awards grants to district school boards for statewide planning and development of the multiagency Network for Students with Emotional or Behavioral Disabilities (SEDNET).<sup>23</sup> SEDNET is a network of 19 regional projects that are composed of major child-serving agencies, community-based service providers, and students and their families. Local school districts serve as fiscal agents for each local regional project.<sup>24</sup> SEDNET focuses on developing interagency collaboration and sustaining partnerships among professionals and families in the education, mental health, substance abuse, child welfare, and juvenile justice systems serving children and youth with and at risk of emotional and behavioral disabilities.<sup>25</sup> Currently, the school districts file a primary report with the DOE yearly, and charter schools are not statutorily required to file a yearly report regarding involuntary examinations of students.

### ***Mental Health Allocation***

The mental health assistance allocation was established in 2018<sup>26</sup> to provide funding to assist school districts in establishing or expanding school-based mental health care. These funds must be allocated annually in the General Appropriations Act or other law to each eligible school

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<sup>19</sup> Section 1011.62(6), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> See s. 1006.04(1)(a), F.S.

<sup>22</sup> Section 1006.04(1)(b), F.S.

<sup>23</sup> Section 1006.04(2), F.S.

<sup>24</sup> Fiscal agencies include the Brevard, Broward, Clay, Columbia, Miami-Dade, Escambia, Hendry, Hernando, Hillsborough, Levy, Liberty, Orange, Palm Beach, Pinellas, Polk, St. Lucie, Volusia, and Washington school districts. The DOE, Bureau of Exceptional Education and Student Services, *BEESS Discretionary Projects* (January 2017), at p. 11, available at <http://www.fldoe.org/core/fileparse.php/7567/urlt/projectslisting.pdf>.

<sup>25</sup> The DOE, Bureau of Exceptional Education and Student Services, *BEESS Discretionary Projects* (January 2017), at p. 11, available at <http://www.fldoe.org/core/fileparse.php/7567/urlt/projectslisting.pdf>.

<sup>26</sup> Section 29, ch. 2018-4, L.O.F.

district. Each school district must receive a minimum of \$100,000 with the remaining balance allocated based on each school district's proportionate share of the state's total unweighted fulltime equivalent student enrollment. Eligible charter schools are entitled to a proportionate share of district funding.

At least 90 percent of a district's allocation must be expended on the elements specified in law. The allocated funds may not replace funds that are provided for this purpose from other operating funds or be used to increase salaries or provide bonuses. School districts are encouraged to maximize third-party health insurance benefits and Medicaid claiming for services, where appropriate.<sup>27</sup>

Before the distribution of the allocation:

- The school district must develop and submit a detailed plan outlining the local program and planned expenditures to the district school board for approval.
- A charter school must develop and submit a detailed plan outlining the local program and planned expenditures to its governing body for approval and it must be provided to the charter school's sponsor after the plan is approved by the governing body.
- The required plans must be focused on delivering evidence-based mental health care treatment to children and include all of the following elements:
  - Provision of mental health assessment, diagnosis, intervention, treatment, and recovery services to students with one or more mental health or co-occurring substance abuse diagnoses and students at high risk of such diagnoses.
  - Coordination of such services with a student's primary care provider and with other mental health providers involved in the student's care.
  - Direct employment of such service providers, or a contract-based collaborative effort or partnership with one or more local community mental health programs, agencies, or providers.<sup>28</sup>

School districts must submit approved plans, including approved plans of each charter school in the district, to the commissioner by August 1 of each fiscal year.<sup>29</sup>

Beginning September 30, 2019, and annually by September 30, each school district must submit to the DOE a report on its program outcomes and expenditures for the previous fiscal year which, at a minimum, must include the number of each of the following:

- Students who receive screenings or assessments.
- Students who are referred for services or assistance.
- Students who receive services or assistance.
- Direct employment service providers employed by each school district.
- Contract-based collaborative efforts or partnerships with community mental health programs, agencies, or providers.<sup>30</sup>

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<sup>27</sup> Section 1011.62(16), F.S.

<sup>28</sup> Section 1011.62(16)(b), F.S.

<sup>29</sup> Section 1011.62(16)(c), F.S.

<sup>30</sup> Section 1011.62(16)(d), F.S.

## Children and the Baker Act

Over a 15-year period, the number of children subject to involuntary commitments under the Baker Act have increased at a faster pace than any other age group.<sup>31</sup> Children are incapable of legally consenting to medical intervention needed to gauge whether an involuntary examination under the Baker Act is necessary.<sup>32</sup> School officials and mental health professionals have stressed the need for additional mobile response teams, greater access to telehealth technology in accessing the teams, and more school psychologists as methods of addressing the growing number of children subjected to the Baker Act.<sup>33</sup> Over 130 law enforcement agencies across the state have policies in place requiring a parent or family member of a minor to be contacted prior to initiating a Baker Act.<sup>34</sup>

## Mental Health Data Reporting and Analysis

Professionals who initiate Baker Acts are required to capture the circumstances of the mental health crisis and make an affirmative statement that the person examined meets statutory criteria.<sup>35</sup> This information is recorded on a standardized form and reported to the DCF.<sup>36</sup> The DCF contracts with the Louis de la Parte Florida Mental Health Institute at the University of South Florida (the Institute) to perform the data analysis and provide an annual report using, among other things, the information provided on the forms.<sup>37</sup> The Institute also analyzes other information relating to mental health and acts as a provider of crisis services to certain patients.<sup>38</sup>

## Report on Involuntary Examinations of Minors

In 2017, the Legislature created a task force within the DCF<sup>39</sup> to address the issue of involuntary examination of minors age 17 years or younger, specifically by:<sup>40</sup>

- Analyzing data on the initiation of involuntary examinations of minors.
- Researching the root causes of and trends in such involuntary examinations.
- Identifying and evaluating options for expediting the examination process.
- Identifying recommendations for encouraging alternatives to or eliminating inappropriate initiations of such examinations.

The task force found that specific causes of increases in involuntary examinations of children are unknown. Possible factors cited in the task force report include:

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<sup>31</sup> Lynn Hatter, WFSU Public Media, *Committed: Improving Florida's Baker Act for Children a Challenge*, December 17, 2020, available at <https://news.wfsu.org/2020-12-17/committed-improving-floridas-baker-act-for-children-a-challenge>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Section 394.463(2)(a)3., F.S.; Rule 65E-5.280(3), F.A.C.

<sup>36</sup> Section 394.463(2)(a)3., F.S.; Rules 65E-5.120 and 65E-5.280(3), F.A.C.

<sup>37</sup> The University of South Florida, Baker Act Reporting Center, *About Us*, <https://www.usf.edu/cbcs/baker-act/about/index.aspx> (last visited January 18, 2022).

<sup>38</sup> See University of South Florida, Baker Act Reporting Center, *What We Do*, <https://www.usf.edu/cbcs/baker-act/about/whatwedo.aspx> (last visited January 18, 2022); and University of South Florida, Louis de la Parte Florida Mental Health Institute, *About the Institute*, <https://www.usf.edu/cbcs/fmhi/about/> (last visited January 27, 2022).

<sup>39</sup> Chapter 2017-151, L.O.F.

<sup>40</sup> The DCF, *Task Force Report on Involuntary Examination of Minors*, (November 2017), at p. 1, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/S17-005766-TASK%20FORCE%20ON%20INVOLUNTARY%20EXAMINATION%20OF%20MINORS.pdf>.

- Increase in mental health concerns:
  - In 2017, 31.5 percent of high school students experienced periods of persistent feelings of sadness or hopelessness within the past year, an increase from 28.5 percent in 2007.
  - In 2017, 17.2 percent of high school students seriously considered attempting suicide in the past year, an increase from 14.5 percent in 2007.<sup>41</sup>
- Social stressors such as parental substance use, poverty and economic insecurity, mass shootings, and social media and cyber bullying.<sup>42</sup>
- Lack of availability of mental health services, due to wait lists for services, limitations on coverage or approval, lack of funding for prevention and diversion, and shortage of psychiatrists and other mental health professionals.
  - Among children ages 12 to 17 in Florida, approximately 13 percent experienced a major depressive episode in the past year, but only about 33 percent of children experiencing a major depressive episode in the past year receive treatment.<sup>43</sup>

In 2019, as a follow up to the 2017 task force report, the Legislature instructed the DCF to prepare a report on the initiation of involuntary examinations of minors age 17 and younger and submit it by November 1 of each odd numbered year.<sup>44</sup> As part of the 2019 report, the DCF was required to:

- Analyze data on the initiation of involuntary examinations of minors.
- Identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child.
- Study root causes for such patterns, trends, or repeated involuntary examinations.
- Make recommendations for encouraging alternatives to and eliminating inappropriate initiations of such examinations.<sup>45</sup>

In 2021, the Legislature<sup>46</sup> required the DCF to include in its analysis data on the initiation of Baker Acts of students who are removed from schools, to identify trends in Baker Acts involving students, and to make recommendations to encourage the use of alternatives to Baker Acts.<sup>47</sup> To aid the DCF in this task, school districts are required to annually report to the DOE the number of Baker Acts initiated at a school, on school transportation, or at a school-sponsored event.<sup>48</sup> The Office of Safe Schools is required to provide data to support the evaluation of mental health services performed by the Institute,<sup>49</sup> however there is no explicit requirement that the data be shared with the DCF.

In its 2021 biennial analysis of Bakers Acts of minors, the DCF reported 24,171 Baker Acts of minors under the age of 18 for FY 2019-2020 and that these made up 18 percent of all (128,193)

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<sup>41</sup> The DCF, *Task Force Report on Involuntary Examination of Minors*, (November 2019), p. 6, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/Report%20on%20Involuntary%20Examination%20of%20Minors.pdf>.

<sup>42</sup> *Id.* at p. 3.

<sup>43</sup> *Id.* at p. 5.

<sup>44</sup> Chapter 2019-134, L.O.F.

<sup>45</sup> *Id.*

<sup>46</sup> Chapter 2021-176, L.O.F.

<sup>47</sup> Section 394.463(4), F.S.

<sup>48</sup> Section 1006.07(10), F.S.

Baker Acts that year.<sup>50</sup> Based on preliminary data from FY 2020-2021, the DCF reports a decrease in Baker Acts of children occurring in the school setting, with fewer than 15 percent of such Baker Acts being initiated at schools.<sup>51</sup>

### **III. Effect of Proposed Changes:**

#### **Data Collection and Reporting Requirements**

The bill amends s. 394.463, F.S., requiring the DCF to include data received from the DOE on Baker Acts of students from both public and charter schools in preparing its biennial report on the involuntary examinations of minors.

Additionally, the bill amends s. 1002.33, F.S., subjecting all charter schools to the same reporting requirements regarding Baker Acts of minors that currently apply to public schools.

The bill amends s. 1006.07, F.S. requiring the DOE to share Baker Act data annually with the DCF no later than July 1 each year.

#### **Procedures Regarding Mental Health Assistance Allocation**

The bill also amends s. 1011.62, F.S., revising the requirements of mental health assistance allocation plans, which are prepared by school districts annually. Specifically, the bill adds the following requirements for the plans:

- After a student's assessment and identification, parents of students receiving services must be provided with information regarding other services available through the student's school or community.
- Any individual living in the same household as a student receiving services must be provided with information about behavioral health services available through other delivery systems or payors for which they may qualify, if such services appear to be needed or enhancements in their behavioral health would contribute to the improved well-being of the student.

The bill is effective July 1, 2022.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>50</sup> The DCF, *Report of Involuntary Examinations of Children*, (November 2021), at p. 8, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/Report%20on%20Involuntary%20Examination%20of%20Minors%20-%202021.pdf>.

<sup>51</sup> *Id.* at 9. The report does note that for eight percent of Baker Acts the setting of the initiation was not reported.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will likely have an indeterminate impact on charter schools as they will be required to collect, maintain, and share data on Baker Acts of students.

C. Government Sector Impact:

The bill will likely have an indeterminate impact on the DOE and the DCF due to the additional data sharing and analysis requirements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.463, 1002.33, 1006.07, and 1011.62.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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By Senator Harrell

25-01131-22

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1 A bill to be entitled  
 2 An act relating to the mental health of students;  
 3 amending s. 394.463, F.S.; revising data the  
 4 Department of Children and Families is required to  
 5 analyze when creating its annual report on the  
 6 initiation of certain involuntary examinations;  
 7 amending s. 1002.33, F.S.; requiring charter schools  
 8 to be in compliance with laws relating to reporting  
 9 involuntary examinations; amending s. 1006.07, F.S.;  
 10 requiring the Department of Education, by a specified  
 11 date, to share with the Department of Children and  
 12 Families data received from school districts relating  
 13 to involuntary examinations; amending s. 1011.62,  
 14 F.S.; revising requirements for plans relating to  
 15 mental health assistance allocations; providing an  
 16 effective date.  
 17  
 18 Be It Enacted by the Legislature of the State of Florida:  
 19  
 20 Section 1. Subsection (4) of section 394.463, Florida  
 21 Statutes, is amended to read:  
 22 394.463 Involuntary examination.—  
 23 (4) DATA ANALYSIS.—Using data collected under paragraph  
 24 (2)(a) and s. 1006.07(10), the department shall, at a minimum,  
 25 analyze data on both the initiation of involuntary examinations  
 26 of children and the initiation of involuntary examinations of  
 27 students who are removed from a school; identify any patterns or  
 28 trends and cases in which involuntary examinations are  
 29 repeatedly initiated on the same child or student; study root

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30 causes for such patterns, trends, or repeated involuntary  
 31 examinations; and make recommendations to encourage the use of  
 32 alternatives to eliminate inappropriate initiations of such  
 33 examinations. The department shall submit a report on its  
 34 findings and recommendations to the Governor, the President of  
 35 the Senate, and the Speaker of the House of Representatives by  
 36 November 1 of each odd-numbered year.  
 37 Section 2. Paragraph (b) of subsection (16) of section  
 38 1002.33, Florida Statutes, is amended to read:  
 39 1002.33 Charter schools.—  
 40 (16) EXEMPTION FROM STATUTES.—  
 41 (b) Additionally, a charter school shall be in compliance  
 42 with the following statutes:  
 43 1. Section 286.011, relating to public meetings and  
 44 records, public inspection, and criminal and civil penalties.  
 45 2. Chapter 119, relating to public records.  
 46 3. Section 1003.03, relating to the maximum class size,  
 47 except that the calculation for compliance pursuant to s.  
 48 1003.03 shall be the average at the school level.  
 49 4. Section 1012.22(1)(c), relating to compensation and  
 50 salary schedules.  
 51 5. Section 1012.33(5), relating to workforce reductions.  
 52 6. Section 1012.335, relating to contracts with  
 53 instructional personnel hired on or after July 1, 2011.  
 54 7. Section 1012.34, relating to the substantive  
 55 requirements for performance evaluations for instructional  
 56 personnel and school administrators.  
 57 8. Section 1006.12, relating to safe-school officers.  
 58 9. Section 1006.07(7), relating to threat assessment teams.

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10. Section 1006.07(9), relating to School Environmental Safety Incident Reporting.

11. Section 1006.07(10), relating to reporting of involuntary examinations.

12. Section 1006.1493, relating to the Florida Safe Schools Assessment Tool.

~~13.12.~~ Section 1006.07(6)(c), relating to adopting an active assailant response plan.

~~14.13.~~ Section 943.082(4)(b), relating to the mobile suspicious activity reporting tool.

~~15.14.~~ Section 1012.584, relating to youth mental health awareness and assistance training.

Section 3. Subsection (10) of section 1006.07, Florida Statutes, is amended to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(10) REPORTING OF INVOLUNTARY EXAMINATIONS.—Each district school board shall adopt a policy to require the district superintendent to annually report to the department the number of involuntary examinations, as defined in s. 394.455, which are initiated at a school, on school transportation, or at a school-sponsored activity. By July 1 of each year, the department shall share such data received from school districts during the previous year with the Department of Children and Families.

Section 4. Paragraph (b) of subsection (14) of section

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1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(14) MENTAL HEALTH ASSISTANCE ALLOCATION.—The mental health assistance allocation is created to provide funding to assist school districts in establishing or expanding school-based mental health care; train educators and other school staff in detecting and responding to mental health issues; and connect children, youth, and families who may experience behavioral health issues with appropriate services. These funds shall be allocated annually in the General Appropriations Act or other law to each eligible school district. Each school district shall receive a minimum of \$100,000, with the remaining balance allocated based on each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment. Charter schools that submit a plan separate from the school district are entitled to a proportionate share of district funding. The allocated funds may not supplant funds that are provided for this purpose from other operating funds and may not be used to increase salaries or provide bonuses. School districts are encouraged to maximize third-party health insurance benefits and Medicaid claiming for services, where appropriate.

(b) The plans required under paragraph (a) must be focused on a multitiered system of supports to deliver evidence-based

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117 mental health care assessment, diagnosis, intervention,  
118 treatment, and recovery services to students with one or more  
119 mental health or co-occurring substance abuse diagnoses and to  
120 students at high risk of such diagnoses. The provision of these  
121 services must be coordinated with a student's primary mental  
122 health care provider and with other mental health providers  
123 involved in the student's care. At a minimum, the plans must  
124 include the following elements:

125 1. Direct employment of school-based mental health services  
126 providers to expand and enhance school-based student services  
127 and to reduce the ratio of students to staff in order to better  
128 align with nationally recommended ratio models. These providers  
129 include, but are not limited to, certified school counselors,  
130 school psychologists, school social workers, and other licensed  
131 mental health professionals. The plan also must identify  
132 strategies to increase the amount of time that school-based  
133 student services personnel spend providing direct services to  
134 students, which may include the review and revision of district  
135 staffing resource allocations based on school or student mental  
136 health assistance needs.

137 2. Contracts or interagency agreements with one or more  
138 local community behavioral health providers or providers of  
139 Community Action Team services to provide a behavioral health  
140 staff presence and services at district schools. Services may  
141 include, but are not limited to, mental health screenings and  
142 assessments, individual counseling, family counseling, group  
143 counseling, psychiatric or psychological services, trauma-  
144 informed care, mobile crisis services, and behavior  
145 modification. These behavioral health services may be provided

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146 on or off the school campus and may be supplemented by  
147 telehealth.

148 3. Policies and procedures, including contracts with  
149 service providers, which will ensure that:

150 a. Students referred to a school-based or community-based  
151 mental health service provider for mental health screening for  
152 the identification of mental health concerns and students at  
153 risk for mental health disorders are assessed within 15 days of  
154 referral. School-based mental health services must be initiated  
155 within 15 days after identification and assessment, and support  
156 by community-based mental health service providers for students  
157 who are referred for community-based mental health services must  
158 be initiated within 30 days after the school or district makes a  
159 referral.

160 b. Parents of a student receiving services under this  
161 subsection are provided information about other behavioral  
162 health services available through the student's school or local  
163 community-based behavioral health services providers. A school  
164 may meet this requirement by providing information about and  
165 Internet addresses for web-based directories or guides for local  
166 behavioral health services.

167 c. Individuals living in a household with a student  
168 receiving services under this subsection are provided  
169 information about behavioral health services available through  
170 other delivery systems or payors for which such individuals may  
171 qualify, if such services appear to be needed or enhancements in  
172 those individuals' behavioral health would contribute to the  
173 improved well-being of the student ~~students who are referred to~~  
174 ~~a school-based or community-based mental health service provider~~

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~~for mental health screening for the identification of mental health concerns and ensure that the assessment of students at risk for mental health disorders occurs within 15 days of referral. School based mental health services must be initiated within 15 days after identification and assessment, and support by community based mental health service providers for students who are referred for community based mental health services must be initiated within 30 days after the school or district makes a referral.~~

4. Strategies or programs to reduce the likelihood of at-risk students developing social, emotional, or behavioral health problems, depression, anxiety disorders, suicidal tendencies, or substance use disorders.

5. Strategies to improve the early identification of social, emotional, or behavioral problems or substance use disorders, to improve the provision of early intervention services, and to assist students in dealing with trauma and violence.

6. Procedures to assist a mental health services provider or a behavioral health provider as described in subparagraph 1. or subparagraph 2., respectively, or a school resource officer or school safety officer who has completed mental health crisis intervention training in attempting to verbally de-escalate a student's crisis situation before initiating an involuntary examination pursuant to s. 394.463. Such procedures must include strategies to de-escalate a crisis situation for a student with a developmental disability as that term is defined in s. 393.063.

7. Policies of the school district must require that in a

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student crisis situation, school or law enforcement personnel must make a reasonable attempt to contact a mental health professional who may initiate an involuntary examination pursuant to s. 394.463, unless the child poses an imminent danger to themselves or others, before initiating an involuntary examination pursuant to s. 394.463. Such contact may be in person or using telehealth as defined in s. 456.47. The mental health professional may be available to the school district either by contracts or interagency agreements with the managing entity, one or more local community behavioral health providers, or the local mobile response team or be a direct or contracted school district employee.

Section 5. This act shall take effect July 1, 2022.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Transportation, *Chair*  
Military and Veterans Affairs, Space,  
and Domestic Security, *Vice Chair*  
Appropriations Subcommittee on Health and  
Human Services  
Children, Families, and Elder Affairs  
Finance and Tax

### SELECT COMMITTEE:

Select Committee on Pandemic  
Preparedness and Response

### SENATOR GAYLE HARRELL

25th District

February 1, 2022

Senator Kathleen Passidomo  
400 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Passidomo,

I respectfully request that **SB 1240 – Mental Health of Students** be placed on the next available agenda for the Rules Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in blue ink that reads "Gayle".

Senator Gayle Harrell  
Senate District 25

Cc: John Phelps, Staff Director  
Cynthia Futch, Committee Administrative Assistant

### REPLY TO:

□ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895  
□ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

WILTON SIMPSON  
President of the Senate

AARON BEAN  
President Pro Tempore

## **SB 1240**

**The Marjory Stoneman Douglas High School Public Safety Act created the Mental Health Assistance Allocation, which provides assistance to school districts with funding school-based mental health care, trains educators and other school staff in detecting and responding to mental health issues, and connects children, youth, and families who may experience behavioral health issues with appropriate services.**

**As you may recall, last year the House unanimously passed HB 7035, our School Safety package, which contained this behavioral health information. However, at the end of session and in the rush to match the bill in the Senate, this was left out when it passed as Senate Bill 590.**

**That bill included an update to Baker Act reporting, and this bill clarifies the School District Baker Act reporting process by requiring charter schools to report Baker Act data, requires the Department of Education to share Baker Act data with DCF by July 1 each year, and requires DCF to use this data for its biennial report on Baker Acts of minors.**

**This legislation will expand upon this, ensuring continuity of care for the whole family, by:**

- **Providing a parent of a student receiving services information about available behavioral health services through the school or local community-based behavioral health providers. The school can provide web-based directories or guides for local services.**
- **Providing any individual living in the same household as a student receiving services, meaning a sibling, parent, grandparent, foster parent, etc., about those same services, but they will also provide information about potential support that may be available if such services appear to be needed or enhancements in their behavioral health would contribute to the improved well-being of the student.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1260

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Independent Hospital Districts

DATE: February 8, 2022

REVISED: \_\_\_\_\_

| ANALYST   | STAFF DIRECTOR | REFERENCE | ACTION           |
|-----------|----------------|-----------|------------------|
| 1. Looke  | Brown          | HP        | <b>Favorable</b> |
| 2. Hunter | Ryon           | CA        | <b>Fav/CS</b>    |
| 3. Looke  | Phelps         | RC        | <b>Favorable</b> |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1260 creates s. 189.0762, F.S., which provides a procedure for an independent hospital district to convert into a private non-profit entity by following the steps that are specified in the bill.

The governing body of the district may vote to evaluate the benefits of conversion for residents of the district. If the governing body of the district determines conversion is in the best interests of the district's residents, the governing body may negotiate an agreement with the governing body of each county in which any part of the district's boundary is located. This agreement must be in writing and include the terms and conditions necessary for both disposing of the assets and liabilities of the system and ensuring health care services are provided to the district's residents.

After completing the negotiation, the governing body of the district and each county that is a party to the agreement may elect to approve the conversion of the district to a private non-profit entity, subject to providing documentation to the public before the vote to approve of the conversion. If the district levies ad valorem taxes, the conversion must be approved by the electors of the district voting in a referendum held during the next general election.

Upon final approval by all required entities, the conversion agreement shall go into full force and effect.

The bill provides an effective date of July 1, 2022.

## II. Present Situation:

### Hospitals

Hospitals are licensed by the Agency for Health Care Administration (AHCA) under ch. 395, F.S., and the general licensure provisions of part II, of ch. 408, F.S. Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.<sup>1</sup> Hospitals must, at a minimum, make clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment, regularly available.<sup>2</sup> Currently, there are 311 hospitals licensed in Florida, of which 153 are for-profit and 158 are nonprofit.<sup>3</sup>

### Hospital and Health Care Special Districts

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.<sup>4</sup> Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.<sup>5</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.<sup>6</sup> Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>7</sup> Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.<sup>8</sup>

A “dependent special district” is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district’s governing body are removable at will by the governing body of a single county or municipality, or the district’s budget is subject to the approval of the governing body of a single county or municipality.<sup>9</sup> An “independent special district” is any district that is not a dependent special district.<sup>10</sup>

Hospital and health care districts are a type of independent special district specializing in the provision of health care services. As of January 20, 2022, there were 31 active hospital and health care districts: 28 that directly operate health care facilities and 3 that provide oversight for

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<sup>1</sup> Section 395.002(13), F.S.

<sup>2</sup> Id.

<sup>3</sup> Florida Health Finder search, available at <https://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Jan. 19, 2022).

<sup>4</sup> See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

<sup>5</sup> See ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

<sup>6</sup> *Halifax Hospital Medical Center*, *supra* at 547.

<sup>7</sup> 2020 – 2022 *Local Gov’t Formation Manual*, p. 64, available at <https://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3117> (last visited Jan. 26, 2022).

<sup>8</sup> The method of financing a district must be stated in its charter. Ss. 189.02(4)(g), 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. See, e.g., ch. 2017-220, s. 6(6) of s. 3, Laws of Fla. (Sunbridge Stewardship District). See also, e.g., ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), 388.221 (mosquito control), ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

<sup>9</sup> Section 189.012(2), F.S.

<sup>10</sup> Section 189.012(3), F.S.



facilities leased by local governments to private sector entities.<sup>11</sup> The charters of hospital and health care districts generally possess a set of core features: a board appointed by the Governor; the authority to build and operate hospitals; the power of eminent domain; the ability to issue bonds payable from ad valorem taxes; the use of ad valorem tax revenue for operating and maintaining hospitals; and providing that such facilities are established for the benefit of the indigent sick.<sup>12</sup>

Many of the state's largest hospital systems are classified as hospital and healthcare special districts created under special act, described below.:

### ***Halifax Health***

Halifax Health is located in Daytona Beach, Florida, and is the area's largest healthcare provider. It has 944 licensed beds and over 500 physicians on staff. The hospital provides a number of services including having a Level II trauma center, comprehensive stroke center, neonatal and pediatric intensive care units, child and adolescent behavioral services, and kidney transplant program. It also provides psychiatric services, a regional cancer program with four outreach centers, the area's largest hospice organization, and a preferred provider organization. Halifax Health is a legislatively chartered taxing healthcare organization governed by a Board of Commissioners appointed by the Governor.<sup>13</sup>

### ***Lee Health***

Lee Health has been open since 1916 and is one of the top five largest public health systems in the United States and the largest community-owned health system in Southwest Florida. The health system has 1,423 beds and is made up of four acute-care hospitals and two specialty hospitals, as well as outpatient centers, walk-in medical centers and primary care physician offices. Lee Health provides regional programs, such as the only children's hospital, the only Level II trauma center and the only kidney transplant center between Tampa and Miami. The system has a medical staff of nearly 1,200 Lee County physicians, 4,500 volunteers and 9,300 employees. Lee Health is governed by a 10-member publicly elected board.<sup>14</sup>

### ***Memorial Healthcare System***

The Memorial Healthcare System has 1,978 beds and is among the nation's largest public healthcare systems. The system consists of a hospital, a freestanding children's hospital, nine primary care centers, four community hospitals, a nursing home, two urgent care centers, a large freestanding 24/7 care center, and a home health agency.

Memorial Regional Hospital, located in Hollywood, is the flagship of the system and one of the largest hospitals in Florida. It offers extensive and diverse services that include Memorial

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<sup>11</sup> Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Jan. 26, 2022).

<sup>12</sup> Florida TaxWatch, *Florida's Fragmented Hospital Taxing District System in Need of Reexamination*, Briefings (Feb. 2009), available at <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/16012/Floridas-Fragmented-Hospital-Taxing-District-System-in-Need-of-Reexamination> (last visited Jan. 26, 2022).

<sup>13</sup> Id.

<sup>14</sup> Id.

Transplant Institute, Memorial Cardiac and Vascular Institute, Memorial Cancer Institute and Memorial Neuroscience Institute.

Memorial Regional Hospital South is also located in Hollywood and offers medical and surgical services and houses Memorial Rehabilitation Institute, an 89-bed, inpatient comprehensive rehabilitation hospital.

Joe DiMaggio Children's Hospital is located in Broward and Palm Beach counties with major services in pediatric cardiology, including surgery and transplantation, oncology, orthopedics and neurosciences.

Memorial Hospital Miramar and Memorial Hospital Pembroke serve western Broward County as community hospitals. Additionally, Memorial Hospital West, which houses Memorial Cancer Institute, Moffitt Malignant Hematology & Cellular Therapy at Memorial Healthcare System, Memorial Manor nursing home, and a variety of ancillary healthcare facilities rounds out the system. Memorial Healthcare System is governed by a seven-member Board of Commissioners appointed by the Governor.<sup>15</sup>

### ***Sarasota Memorial Health Care System***

Sarasota Memorial Health Care System is an 839-bed medical center with over 6,000 staff and 1,000 physicians. Founded in 1925, Sarasota Memorial provides specialized expertise in cardiac, vascular, oncology, maternity and neuroscience services, as well as a complete continuum of care, with a network of outpatient and urgent care centers, physician practices, rehabilitation and skilled nursing, among other programs.

The region's only public hospital, Sarasota Memorial is governed by the Sarasota County Public Hospital Board, made up of nine unpaid citizens elected by local voters. It is the only hospital in Sarasota County providing trauma services, obstetrical care, pediatrics, neonatal intensive care, and psychiatric services for patients of all ages. Sarasota Memorial also operates a Community Medical Clinic, which provides specialty care for uninsured and underinsured residents.<sup>16</sup>

### ***Broward Health***

Broward Health is has been located in South Florida for more than 80 years. Broward Health includes four major hospitals and more than 30 locations and offices overall. The staff of Broward Health includes over 1,800 doctors and 8,000 other healthcare professionals.<sup>17</sup>

Broward Health is governed by a seven-member Board of Commissioners, each appointed by the governor to a four-year term. The terms are staggered to expire in alternate years. Five commissioners represent specific regions within Broward County while the other two are at-large members. The Board exercises budgetary authority, selects the senior executive management, participates in the fiscal management, provides taxing authority, and determines the scope of

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<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Broward Health Services, Broward Health, available at <https://www.browardhealth.org/services> (last visited Jan 20, 2022).

services to be provided to the community. The President/CEO of the North Broward Hospital District reports to the Board.<sup>18</sup>

### **Non-for-Profit Corporations**

Not-for-profit corporations are regulated by the Florida Not For Profit Corporation Act (Non-Profit Act), which outlines the requirements for creating and managing a private not-for-profit corporation as well as the powers and duties of the corporation.<sup>19</sup> The Non-Profit Act authorizes not-for-profit corporations to be created for any lawful purpose or purposes that are not for pecuniary profit and that are not specifically prohibited to corporations by other state laws.<sup>20</sup> The Non-Profit Act specifies that such purposes include charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.

Florida law authorizes not-for-profit corporations to operate with the same degree of power provided to for-profit corporations in the state, including the power to appoint officers, adopt bylaws, enter into contracts, sue and be sued, and own and convey property.<sup>21</sup> Officers and directors of certain not-for-profit corporations are also protected by the same immunity from civil liability provided to directors of for-profit corporations.<sup>22</sup> Unlike for-profit corporations, certain not-for-profit corporations may apply for exemptions from federal, state, and local taxes.<sup>23</sup>

Not-for-profit corporations are required to submit an annual report to the Department of State that contains the following information:

- The name of the corporation and the state or country under the laws of which it is incorporated;
- The date of incorporation or, if a foreign corporation, the date on which it was admitted to conduct its affairs in Florida;
- The address of the principal office and the mailing address of the corporation;
- The corporation's federal employer identification number, if any, or, if none, whether application has been made for one;
- The names and business street addresses of its directors and principal officers;
- The street address of its registered office in Florida and the name of its registered agent at that office; and
- Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of the Non-Profit Act.<sup>24</sup>

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<sup>18</sup> Broward Health Board Information, Broward Health, available at <https://www.browardhealth.org/pages/board-calendar-2022> (last visited Jan. 20, 2022).

<sup>19</sup> Ch. 90-179, L.O.F.

<sup>20</sup> Section 617.0301, F.S.

<sup>21</sup> Sections 617.0302 and 607.0302, F.S.

<sup>22</sup> Sections 617.0834 and 607.0831, F.S.

<sup>23</sup> See, e.g., 26 U.S.C. s. 501, s. 212.08(7)(p), F.S.

<sup>24</sup> Section 617.1622, F.S.

A not-for-profit corporation may receive public funds from the state or a local government in certain situations. Public funds are defined as “moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof and the judicial branch, and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose.”<sup>25</sup> The state or a local government may provide public funds to a not-for-profit corporation through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.<sup>26</sup>

### **III. Effect of Proposed Changes:**

The bill authorizes the governing body of an independent hospital district to elect by a majority vote plus one to evaluate the potential conversion of the district into a private non-profit entity organized as a Florida not-for-profit corporation. The governing body must consider the potential benefits of conversion for the residents of the district and:

- Conduct a properly-noticed public hearing to provide residents of the district an opportunity to testify (the hearing must be held at a meeting other than a regularly-noticed or emergency meeting of the district);
- Contract with an independent entity that has at least five years of experience conducting comparable evaluations of hospital organizations similar in size and function to the district to conduct an evaluation according to applicable industry best practices (the independent entity may not have any affiliation with or financial involvement in the district or any member of its governing body); and
- Make available to the public on its website all documents considered by the governing body in making its determination.

The evaluation must be completed and a final report of the independent entity presented to the district by no later than 180 days after the date the vote was taken to authorize the evaluation. The final report must include a statement signed by the presiding officer of the governing board of the district and the chief executive officer of the independent entity conducting the evaluation that, upon each person's reasonable knowledge and belief, the contents and conclusions of the evaluation are true and correct.

Within 120 days of receipt of the final report, the governing body of the district must determine, by majority vote plus one, whether the interests of residents of the district are best served by conversion. If the governing body determines conversion is in the best interest of residents, the district must negotiate and complete an agreement with the board of county commissioners for each county in which any part of the district's boundary is located.

The agreement between the governing body of the district and each county commission must be completed no later than 120 days after the date of the public meeting during which the governing

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<sup>25</sup> Section 215.85(3)(b), F.S.

<sup>26</sup> See, e.g., S. 2-103(a), Pinellas County Code (authorizing the board of county commissioners to expend monies from the county general fund for membership fees and dues for county employees and officials for professional associations); S. 120-65(a)(2), South Florida Water Management District Administrative Policies (authorizing the district to pay for an employee's membership in a professional organization not required by his or her job).

body of the district determined conversion was in the best interest of residents. The agreement must be in writing, dispose of all assets and liabilities of the district, and include:

- A description of each asset and liability that will be transferred to each county;
- The estimated total value of the assets and liabilities that will be transferred to each county;
- If the agreement is with more than one county, a description of the methodology used to allocate the assets and liabilities of the district between the counties;
- A description of all assets and liabilities that will be transferred to the succeeding non-profit entity;
- The total value of assets and liabilities that will be transferred to the succeeding non-profit entity;
- If any debts remain, how those debts will be resolved,
- An enforceable commitment that programs and services provided by the district will continue to be provided to all residents of the district in perpetuity, so long as the non-profit entity is in operation (or, if otherwise agreed to by the district and each county that is a party to the agreement, until the non-profit entity has otherwise met all obligations set forth in the agreement);
- A provision that transfers the rights and obligations agreed to by the district and each county that is a party to the agreement to the successor nonprofit entity upon conversion of the district; and
- Any other terms or conditions mutually agreed upon by the district and each county that is a party to the agreement.

The bill prohibits any member of the board of commissioners for any county that is a party to the agreement from serving on the board of the successor nonprofit entity, but allows for members of the district's governing body to serve on the board of the successor entity. Members of the governing body of the district and the board of commissioners of each county that is a party to the agreement must disclose all conflicts of interest as required by s. 112.313, F.S., including, but not limited to:

- Whether the conversion of the district will result in a special private gain or loss to any member of the governing body of the district or boards of commissioners or to any senior executives of the independent hospital district; and
- If any member of the governing body of the district will serve on the board of the successor nonprofit entity (intent to serve on the board of the successor nonprofit entity does not disqualify a member from voting on the proposed conversion).

Upon completion of the agreement, the governing body of the district may agree, by a majority vote plus one at a public meeting that is not a regularly-scheduled or emergency meeting of the district, to approve of the conversion of the district to a non-profit entity and any agreements related to the conversion. The agreement must also be approved by the board of commissioners of each county that is subject to the agreement at a properly noticed public meeting. Both the district and each county that is subject to the agreement must publish all evaluations, agreements, disclosures, and other documents supporting the conversion on their websites for at least 20 days before the vote to approve of the conversion.

If the governing bodies of the district and each county subject to the agreement approve of the proposed agreement, a referendum of the qualified electors of the district must be conducted at

the next general election if the district levies ad valorem taxes. Once approved by all required entities the agreement shall go into full force and effect. The district must file a copy of the agreement with the Department of Economic Opportunity no later than ten days after the date of the referendum approving the agreement.

Within 30 days of completing the transfer of assets and liabilities as provided in the agreement, the district must notify DEO that the transfer is complete. The district is deemed automatically dissolved upon receipt of the notice.

The bill takes effect on July 1, 2022.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

Subsection (2) of the committee substitute refers to “an agreement that meets the requirements of subsection (4).” However, the requirements of the agreement appear to be laid out in subsection (5).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 189.0762 of the Florida Statutes.

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

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

**CS by Community Affairs on February 2, 2022:**

The committee substitute moves the bill from ch. 155 F.S., to ch. 189 F.S., to make the conversion applicable to independent hospital districts rather than public healthcare systems and makes the following provisions:

- Requires an independent evaluation of a conversion to be performed by an independent entity that has at least 5 years of experience conducting comparable evaluations of hospital organizations similar in size and function.
- Requires the evaluation of a conversion to be presented to the governing body of the hospital district no later than 180 days after the date a vote is taken.
- Allows the governing board 120 days after the date they receive the final report to determine whether the best interests of the residents of the district are served by converting to a nonprofit.
- Provides that an agreement between a hospital district and each county in which part of the district boundary is located must be completed no later than 120 days after the vote of the governing body for conversion. Such agreement must be made during a properly noticed meeting.
- Amends the list of provisions to be included an agreement, including how debts will be resolved if they exist.
- Requires members of the governing board of the independent district and any county commissioners to disclose all conflicts of interest relating to the conversion.
- Requires an agreement to be approved by the qualified electors of the independent hospital district voting in a referendum conducted at the next general election for any independent hospital district that exercise ad valorem taxing powers.

**B. Amendments:**

None.

By the Committee on Community Affairs; and Senator Gruters

578-02648-22

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1 A bill to be entitled  
 2 An act relating to independent hospital districts;  
 3 creating s. 189.0762, F.S.; defining the terms  
 4 "independent hospital district" and "nonprofit  
 5 entity"; authorizing the governing body of an  
 6 independent hospital district to evaluate certain  
 7 benefits of the potential conversion of the  
 8 independent hospital district to a nonprofit entity  
 9 under certain circumstances; specifying requirements  
 10 for such evaluations; requiring that the evaluation be  
 11 completed and the final report be presented to the  
 12 governing body within a specified timeframe; requiring  
 13 the report to be published on the independent hospital  
 14 district's website; providing requirements for the  
 15 report; requiring the governing body to make certain  
 16 determinations within a specified timeframe; requiring  
 17 the governing body to negotiate and complete an  
 18 agreement with the board of county commissioners for  
 19 each affected county before converting the independent  
 20 hospital district to a nonprofit entity; requiring  
 21 that such agreements be entered into within a  
 22 specified timeframe; providing requirements for such  
 23 agreements; prohibiting members of the board of county  
 24 commissioners for counties party to such agreements  
 25 from serving on the board of the successor nonprofit  
 26 entity; allowing members of the governing body of the  
 27 independent hospital district to serve on the board of  
 28 the successor nonprofit entity; requiring members of  
 29 the governing body and each board of county

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

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30 commissioners party to the agreement to disclose all  
 31 conflicts of interest; requiring the evaluation, all  
 32 agreements and disclosures, and any other supporting  
 33 documents related to the conversion to be published on  
 34 the websites of the independent hospital district and  
 35 each county that is party to the agreement for a  
 36 specified timeframe before the district and each  
 37 county may vote on the proposed conversion; providing  
 38 for the conversion of the independent hospital  
 39 district to a nonprofit entity; providing public  
 40 meeting requirements; requiring the independent  
 41 hospital district to notify the Department of Health  
 42 of the transfer of assets and liabilities to the  
 43 nonprofit entity within a specified timeframe;  
 44 providing for dissolution of the district upon the  
 45 department's receipt of such notification; providing  
 46 that an independent hospital district continues to  
 47 exist if the governing body and the board of county  
 48 commissioners for each affected county are unable to  
 49 reach an agreement; providing an effective date.

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

52  
 53 Section 1. Section 189.0762, Florida Statutes, is created  
 54 to read:

55 189.0762 Conversion of an independent hospital district to  
 56 a nonprofit entity.-

57 (1) For purposes of this section, the term:

58 (a) "Independent hospital district" means an entity created

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pursuant to a special act which operates one or more hospitals licensed under chapter 395 and which is governed by the governing body of a special district or by the board of trustees of a public health trust created under s. 154.07.

(b) "Nonprofit entity" means a Florida not-for-profit corporation operating under chapter 617.

(2) The governing body of an independent hospital district may elect, by a majority vote plus one, to commence an evaluation of the benefits to the residents of converting the independent hospital district to a nonprofit entity if the governing body of such district and each county within which any part of the district's boundaries are located execute an agreement that meets the requirements of subsection (4). In evaluating the benefits of converting the independent hospital district to a nonprofit entity, the governing body of the district must:

(a) Publish notice of and conduct a public hearing in accordance with s. 189.015(1) to provide the residents of such district the opportunity to publicly testify regarding the conversion of the independent hospital district. The public hearing must be held at a meeting other than a regularly noticed meeting of the independent hospital district or an emergency meeting of such district.

(b) Contract with an independent entity that has at least 5 years of experience conducting comparable evaluations of hospital organizations similar in size and function to the independent hospital district to conduct the evaluation according to applicable industry best practices. The independent entity may not have any affiliation with or financial

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involvement in the district or with any member of the governing body of such district.

(c) Publish all documents considered by the governing body of the independent hospital district on the website of the district.

(3) The evaluation must be completed and the final report presented to the governing body of the independent hospital district no later than 180 days after the date of the vote taken by the governing body of such district to evaluate the conversion. The final report must be published on the website of the independent hospital district. The final report must include a statement signed by the presiding officer of the governing board of the independent hospital district and the chief executive officer of the independent entity conducting the evaluation that, upon each person's reasonable knowledge and belief, the contents and conclusions of the evaluation are true and correct.

(4) No later than 120 days after the date the governing body of the independent hospital district received the final report, the governing body of such district must determine, by majority vote plus one, whether the interests of the residents of the district are best served by converting the independent hospital district to a nonprofit entity. If the governing body of the independent hospital district determines conversion is in the best interest of the district, the independent hospital district must negotiate and complete an agreement with the board of county commissioners for each county in which any part of the district boundaries are located before conversion may occur.

(5) An agreement between the governing body of the

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independent hospital district and each county in which any part of the district boundary is located must be completed no later than 120 days after the date of the public meeting at which the governing body of such district determines conversion of the independent hospital district is in the best interest of its residents. The agreement must be in writing, dispose of all assets and liabilities of the independent hospital district, and include:

(a) A description of each asset that will be transferred to each county.

(b) A description of each liability that will be transferred to each county.

(c) The estimated total value of the assets that will be transferred to each county.

(d) The estimated total value of the liabilities that will be transferred to each county.

(e) If the agreement is with more than one county, a description of the methodology used to allocate the assets and liabilities of the district between the counties.

(f) A description of all assets that will be transferred to the succeeding nonprofit entity.

(g) A description of all liabilities that will be assumed by the succeeding nonprofit entity.

(h) The estimated total value of the assets that will be transferred to the succeeding nonprofit entity.

(i) The total value of the liabilities to be assumed by the succeeding nonprofit entity.

(j) If any debts remain, how those debts will be resolved.

(k) An enforceable commitment that programs and services

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provided by the district will continue to be provided to all residents of the former district in perpetuity so long as the nonprofit entity is in operation, or if otherwise agreed to between the independent hospital district and the county or counties party to the agreement, until the nonprofit entity has otherwise met all obligations set forth in the agreement.

(l) A provision transferring the rights and obligations as agreed to between the governing body of the independent hospital district and the county or counties to the successor nonprofit entity.

(m) Any other terms mutually agreed to between the governing body of the independent hospital district and the county or counties.

(6) (a) No member of the board of county commissioners for any county that is a party to the agreement may serve on the board of the successor nonprofit entity.

(b) Members of the governing body of the independent hospital district may serve on the board of the successor nonprofit entity.

(7) The members of the governing body of the independent hospital district and of the board of county commissioners in each county party to the agreement must disclose all conflicts of interest as required by s. 112.313, including, but not limited to:

(a) Whether the conversion of the independent hospital district will result in a special private gain or loss to any member of the governing body of the independent hospital district or boards of county commissioners or to any senior executives of the independent hospital district.

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(b) If any member of the governing body of the independent hospital district will serve on the board of the successor nonprofit entity. Such intent to serve on the board of the successor nonprofit entity does not disqualify any member from voting on the proposed conversion.

(8) The evaluation, agreements, disclosures, and any other supporting documents related to the conversion of the independent hospital district must be published on the website of the independent hospital district and each county that is a party to the agreement for 20 days before the governing body of the independent hospital district and the board of county commissioners for each county may vote on the proposed conversion.

(9) (a) In a public meeting noticed as required by subsection (2), the governing body of the independent hospital district may approve, by majority vote plus one, the conversion of such district to a nonprofit entity and any agreements related to the conversion.

(b) The agreement negotiated under this section must be approved by each board of county commissioners for each affected county in a properly noticed public meeting.

(c) If the governing body of the independent hospital district and the board of county commissioners for each affected county approve the proposed agreement, a referendum of the qualified voters of the district must be conducted at the next general election as required under s. 100.031 for independent hospital districts that exercise ad valorem taxing powers. A referendum is not required for independent hospital districts that do not exercise ad valorem taxing powers.

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(d) If approved by the qualified electors of the independent hospital district voting in a referendum conducted in accordance with paragraph (c), the agreement between the independent hospital district and each board of county commissioners for each affected county shall go into full force and effect. The independent hospital district shall file a copy of the agreement with the department no later than 10 days after the date of the referendum approving the agreement and conversion.

(10) No later than 30 days after the complete transfer of assets and liabilities as provided in the agreement, the independent hospital district shall notify the department. The district shall be dissolved automatically upon receipt of the notice by the department.

(11) If the governing body of the independent hospital district and the board of county commissioners of each affected county are unable to reach an agreement that would result in the conversion of the independent hospital district to a nonprofit entity, the district shall continue to exist.

Section 2. This act shall take effect July 1, 2022.



*The Florida Senate*

## Committee Agenda Request

**To:** Senator Kathleen Passidomo, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 3, 2022

---

I respectfully request that **Senate Bill #1260**, relating to Conversion of a Public Health Care System, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

**Problem Addressed:**

CS/SB 1260 creates s. 189.0762, F.S., which provides a procedure for an independent hospital district to convert into a private non-profit entity by following the steps that are specified in the bill.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: John B. Phelps, Staff Director  
Tom Yeatman, Deputy Staff Director  
Cynthia Futch, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

2/10/2022

Meeting Date

Rules

Committee

CS/SB 1260

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Michael Nachev

Phone

239-343-6509

Address

9800 S Health Park Dr.

Email

Michael.Nachev@leehealth.org

Street

Fort Myers

State

FL

Zip

33908

Speaking:



For



Against



Information

**OR**

Waive Speaking:



In Support



Against

**PLEASE CHECK ONE OF THE FOLLOWING:**



I am appearing without  
compensation or sponsorship.



I am a registered lobbyist,  
representing:

Lee Health



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

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

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1536

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee and Senator Boyd

SUBJECT: Money Services Businesses

DATE: February 8, 2022

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------|----------------|-----------|------------------|
| 1. | Schrader | Knudson        | BI        | <b>Fav/CS</b>    |
| 2. | Renner   | McKay          | CM        | <b>Fav/CS</b>    |
| 3. | Schrader | Phelps         | RC        | <b>Favorable</b> |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1536 revises provisions and definitions regarding the persons in control of a money services business (MSB) and makes conforming changes. The purpose of these revisions is to more specifically define the persons subject to fingerprinting and background checks pursuant to an MSB application.

The effective date of the bill is October 1, 2022.

**II. Present Situation:**

**Licensing of Money Services Businesses**

The Office of Financial Regulation (OFR) is responsible for the regulatory oversight of Florida's financial services industry. As part the OFR's responsibilities, OFR oversees MSBs, which are regulated under three license categories created under ch. 560, F.S. The first category, money transmitters and persons selling or issuing payment instruments, is regulated under part II of ch. 560, F.S. The second category, check cashers and foreign currency exchangers, is regulated under part III of ch. 560, F.S.

To be licensed under ch. 560, F.S., an MSB applicant must:

- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the MSB or deferred presentment provider shall be operated lawfully and fairly;
- Be legally authorized to do business in Florida;
- Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380, if applicable;
- Have an anti-money laundering program in place which meets the requirements of 31 C.F.R. s. 1022.210; and
- Provide the OFR with all the information required under this chapter and related rules.<sup>1</sup>

To apply as a money services business under ch. 560, F.S., a person must submit:

- An application to OFR for an MSB license that must include, on a form prescribed by rule, all of the following:
  - The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business;
  - The date of the applicant's formation and the state where the applicant was formed, if applicable;
  - The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127, F.S.;
  - A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded;
  - The applicant's history of operations in other states, if applicable, and a description of the money services business or deferred presentment provider activities the applicant proposes to conduct in Florida;
  - If the applicant or its parent is a publicly traded company, for the preceding year, copies of all filings made by the applicant with the United States Securities and Exchange Commission (SEC); or, if publicly traded in a country other than the United States, such filings with that country's regulator similar to the SEC;
  - The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors operating within Florida. For each branch office and each location of an authorized vendor, the applicant must include the nonrefundable fee required by s. 560.143, F.S.;
  - The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments are drawn or through which the payment instruments are payable;
  - The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld;
  - The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each executive officer, director, controlling shareholder, and responsible person;

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<sup>1</sup> Section 560.1401, F.S.

- The name of the registered agent in this state for service of process unless the applicant is a sole proprietor; and
  - Any other information specified in ch. 560, F.S. or by rule.<sup>2</sup>
  - A nonrefundable application fee, as specified in s. 560.143, F.S.<sup>3</sup>
  - Fingerprints, for live-scan processing in accordance with rules adopted by the Financial Services Commission (Commission), for each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127, F.S.
- Regarding such fingerprints:
- They may be submitted through a third-party vendor authorized by the Florida Department of Law Enforcement (FDLE) to provide live-scan fingerprinting. The FDLE must also conduct the state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The OFR must review the results of this background check
  - The cost of processing and retaining the fingerprints are borne by the person subject to the background checks to determine license eligibility.
  - Fingerprints are not required from publicly traded corporations.<sup>4</sup>
  - A copy of the applicant's written anti-money laundering program required under 31 C.F.R. s. 1022.210.<sup>5</sup>
  - Within the time allotted by rule, any information needed to resolve any deficiencies found in the application.<sup>6</sup>

Licenses issued to MSBs cannot be for more than 2 years,<sup>7</sup> after which, the MSB must reapply for licensure pursuant to s. 560.142, F.S.

### **Federal Bureau of Investigation Determination Regarding Access to Criminal History Record Information**

As stated above, MSB applicant fingerprints must be submitted to FDLE for a state and federal criminal history background check. The federal check is conducted through the FBI, which manages a criminal history record information (CHRI) system, through which this information can be obtained. The purpose the CHRI system is to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.<sup>8</sup> Federal Public Law 92-544 authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes. However, this access can only be authorized by a state statute which has been subsequently approved by the Attorney General of the United States. Section 560.141, F.S. (the statute authorizing background

<sup>2</sup> Section 560.141(1)(a), F.S.

<sup>3</sup> Section 560.141(1)(b), F.S.

<sup>4</sup> Section 560.141(1)(c), F.S.

<sup>5</sup> Section 560.141(1)(d), F.S.

<sup>6</sup> Section 560.141(1)(e), F.S.

<sup>7</sup> Section 560.141(2), F.S.

<sup>8</sup> 28 C.F.R. s. 20.1.



checks for MSB applicants), had been previously approved for access to CHRI; however, the situation has recently changed.

In an effort to obtain CHRI for applicants to a recently created (in 2020) Financial Technology Sandbox under s. 559.952, F.S., the FDLE sent correspondence to the FBI's Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to access criminal justice information and identifies the specific agency requesting the information. CJILU reviewed s. 559.952, F.S., which derives its fingerprinting authority from s. 560.141, F.S. CJILU responded to this request stating that s. 560.141, F.S. did not qualify for CHRI because the terms "responsible person" and "control of a money services business" as used in section 560.141, F.S., were overly broad and, thus, did not sufficiently define the categories of people subject to the background check.<sup>9</sup> The CJILU did express that since it had previously approved s. 560.141, F.S., it would continue to honor fingerprints submitted for MSB applicants during a grace period in order to allow Florida to amend 560.141, F.S., but it would not extend this grace period to other types of applicants.

### III. Effect of Proposed Changes:

**Section 1** amends s. 560.103, F.S., to revise certain definitions relating to MSBs in order to better define the persons subject to fingerprinting under the chapter. The section creates an extensive definition of a "control person" for an MSB. Such person is defined as a person who possesses the power, directly or indirectly, to direct the management or policies of an MSB, whether through ownership of securities, by contract, or through other means, and regardless of whether such person has an official title or receives a salary or other compensation. The definition also provides that the following persons are presumed to be control persons:

- The president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, and chief compliance officer;
- A person holding any of the officer positions named in the money services business's governing documents;
- A person holding any position named by the money services business's liability insurance coverage for directors and officers, if the business has such coverage; and
- A director of the money services business's board of directors.

The definition also provides that for certain specified entities, additional persons are control persons. These are:

- For corporations that are not publicly traded: Any shareholder that owns 25 percent or more or that has the power to vote 25 percent or more of a class of voting securities is a control person.
- For partnerships: All general partners and limited or special partners that have contributed 25 percent or more, or that have the right to receive, upon dissolution, 25 percent or more of the partnership's capital.
- For trusts: Each trustee.

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<sup>9</sup> Office of Financial Regulation, Senate Bill 1536 Analysis (January 12, 2022) (on file with the Senate Committee on Banking and Insurance), and Letter from Heather R. Postletwait, Paralegal Specialist for the FBI CJILU, to Nathan Pate, Florida Dept. of Law Enforcement, (Mar. 22, 2022) (on file with the Senate Committee on Banking and Insurance).

- For limited liability companies: All managers and those members that have contributed 25 percent or more or that have the right to receive, upon dissolution, 25 percent or more of the limited liability company's capital.

The section also simplifies the definition of “affiliated party” to be a control person, employee, or foreign affiliate of an MSB. Finally, the section deletes the definitions of “officer” and “responsible person.”

The intent of the revisions in this section is to more specifically define the persons subject to fingerprinting and background checks pursuant to an MSB application and to make this definition less broad. The purpose of which is to address the specificity concerns of the CJILU and, thereby, maintain the OFR's access to the FBI's CHRI.

**Sections 2, 3, 4, and 6** revise s. 560.118, F.S. (relating to the filing of quarterly reports by MSBs), s. 560.123, F.S. (the Florida Control of Money Laundering in Money Services Business Act), s. 560.126, F.S., (required noticing by MSBs), and s. 560.141, F.S. (relating to MSB license applications), respectively, to conform to the revisions made in **Section 1**. **Section 4** also deletes provisions requiring persons proposing to acquire a controlling interest in an MSB to file a new application with the OFR, and deletes a rulemaking authorization regarding waivers of this application requirement. **Section 6** also deletes an obsolete provision relating to fingerprinting for money services business licenses approved prior to October 1, 2013.

**Section 5** repeals s. 560.127, F.S., to delete a provision that establishes when a person controls an MSB, as this section is no longer necessary with the revisions in **Section 1**.

**Section 7** revises s. 560.143, F.S., to delete a cross-reference to conform to the changes in **Section 1** and to make a conforming change deleting a provision regarding license application fees relating to a change in control of a money services business.

**Section 8** re-enacts s. 559.952(4)(a), F.S., relating to the Financial Technology Sandbox, to incorporate the changes made to ss. 560.118 and 560.141, F.S.

**Section 9** re-enacts s. 560.114(2)(c), F.S., relating to disciplinary actions and penalties, to incorporate the changes made to s. 560.114, F.S.

**Section 10** provides an effective date of October 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.118, 560.123, 560.126, 560.141, and 560.143.

This bill repeals section 560.127 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes. 559.952 and 560.114.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS by Commerce and Tourism on January 31, 2022:**

The committee substitute makes the following changes:

- Makes technical changes.

- Deletes an obsolete provision in s. 560.141(1)(c)7., F.S., relating to fingerprinting for money services business licenses approved prior to October 1, 2013.
- Makes a conforming change deleting a provision in s. 560.143(1)(g), F.S., regarding license application fees relating to a change in control of a money services business.

**CS by Banking and Insurance on January 18, 2022:**

The committee substitute deletes from SB 1536 the following provisions:

- Creation of rulemaking authority to establish disqualifying periods for where a money services business is prohibited from licensure for specified violations.
- Authorization for the OFR to bar a person from licensure, or from acting as a control person of an MSB, for that person's violation of ch. 560, F.S., agency rules or orders, or written agreement with the OFR; and
- Authorization for OFR to suspend the license of an MSB if its control person is arrested for certain offenses.

**B. Amendments:**

None.

By the Committees on Commerce and Tourism; and Banking and Insurance; and Senator Boyd

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A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; defining the terms "control person" and "publicly traded"; revising and deleting definitions; amending s. 560.118, F.S.; providing that a rule may require certain reports to the Office of Financial Regulation to contain declarations by control persons, rather than officers or other responsible persons; amending s. 560.123, F.S.; providing that control persons, rather than officers, are not liable for loss or damages under certain circumstances; amending s. 560.126, F.S.; requiring licensees to report changes in control persons, rather than certain other entities or persons; deleting a requirement for certain persons to submit a licensure application under certain circumstances; deleting the definition of the term "controlling interest"; providing that the addition of a control person, rather than certain other entities or persons, is subject to certain requirements; deleting a requirement for the Financial Services Commission to adopt rules; repealing s. 560.127, F.S., relating to control of a money services business; amending s. 560.141, F.S.; revising requirements for applications for licensure as a money services business; deleting the definition of the term "publicly traded"; deleting obsolete language; amending s. 560.143, F.S.; removing a limitation on specified license application fees under certain circumstances; reenacting s.

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

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559.952(4) (a), F.S., relating to the Financial Technology Sandbox, to incorporate the amendments made to ss. 560.118 and 560.141, F.S., in references thereto; reenacting s. 560.114(2) (c), F.S., relating to disciplinary actions and penalties, to incorporate the amendment made to s. 560.141, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 560.103, Florida Statutes, is amended to read:

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

(1) "Affiliated party" means a control ~~director, officer, responsible~~ person, employee, or foreign affiliate of a money services business, ~~or a person who has a controlling interest in a money services business as provided in s. 560.127.~~

(2) "Appropriate regulator" means a state, federal, or foreign agency that has been granted authority to enforce state, federal, or foreign laws related to a money services business or deferred presentment provider.

(3) "Authorized vendor" means a person designated by a money services business licensed under part II of this chapter to act on behalf of the licensee at locations in this state pursuant to a written contract with the licensee.

(4) "Branch office" means the physical location, other than the principal place of business, of a money services business operated by a licensee under this chapter.

(5) "Cashing" means providing currency for payment

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instruments except for travelers checks.

(6) "Check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks.

(7) "Commission" means the Financial Services Commission.

(8) "Compliance officer" means the individual in charge of overseeing, managing, and ensuring that a money services business is in compliance with all state and federal laws and rules relating to money services businesses, as applicable, including all money laundering laws and rules.

(9) "Conductor" means a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

(10) "Control person" means:

(a) A person who possesses the power, directly or indirectly, to direct the management or policies of a money services business, whether through ownership of securities, by contract, or through other means, and regardless of whether such person has an official title or receives a salary or other compensation. The following persons are each presumed to be a control person:

1. The president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, and compliance officer.

2. A person holding any of the officer positions named in the money services business's governing documents.

3. A person holding any position named by the money services business's liability insurance coverage for directors and officers, if the business has such coverage.

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4. A director of the money services business's board of directors.

(b) For a corporation that is not publicly traded, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities.

(c) For a partnership, all general partners and those limited or special partners that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the partnership's capital.

(d) For a trust, all trustees.

(e) For a limited liability company, all managers and those members that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the limited liability company's capital.

(11)~~(10)~~ "Corporate payment instrument" means a payment instrument on which the payee named on the instrument's face is other than a natural person.

(12)~~(11)~~ "Currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(13)~~(12)~~ "Deferred presentment provider" means a person who is licensed under part II or part III of this chapter and has filed a declaration of intent with the office to engage in

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117 deferred presentment transactions as provided under part IV of  
 118 this chapter.

119 (14)~~(13)~~ "Department" means the Department of Financial  
 120 Services.

121 (15)~~(14)~~ "Electronic instrument" means a card, tangible  
 122 object, or other form of electronic payment for the transmission  
 123 or payment of money or the exchange of monetary value, including  
 124 a stored value card or device that contains a microprocessor  
 125 chip, magnetic stripe, or other means for storing information;  
 126 that is prefunded; and for which the value is decremented upon  
 127 each use.

128 (16)~~(15)~~ "Financial audit report" means a report prepared  
 129 in connection with a financial audit that is conducted in  
 130 accordance with generally accepted auditing standards prescribed  
 131 by the American Institute of Certified Public Accountants by a  
 132 certified public accountant licensed to do business in the  
 133 United States, and which must include:

134 (a) Financial statements, including notes related to the  
 135 financial statements and required supplementary information,  
 136 prepared in conformity with accounting principles generally  
 137 accepted in the United States. The notes must, at a minimum,  
 138 include detailed disclosures regarding receivables that are  
 139 greater than 90 days, if the total amount of such receivables  
 140 represents more than 2 percent of the licensee's total assets.

141 (b) An expression of opinion regarding whether the  
 142 financial statements are presented in conformity with accounting  
 143 principles generally accepted in the United States, or an  
 144 assertion to the effect that such an opinion cannot be expressed  
 145 and the reasons.

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146 (17)~~(16)~~ "Foreign affiliate" means a person located outside  
 147 this state who has been designated by a licensee to make  
 148 payments on behalf of the licensee to persons who reside outside  
 149 this state. The term also includes a person located outside of  
 150 this state for whom the licensee has been designated to make  
 151 payments in this state.

152 (18)~~(17)~~ "Foreign currency exchanger" means a person who  
 153 exchanges, for compensation, currency of the United States or a  
 154 foreign government to currency of another government.

155 (19)~~(18)~~ "Fraudulent identification paraphernalia" means  
 156 all equipment, products, or materials of any kind that are used,  
 157 intended for use, or designed for use in the misrepresentation  
 158 of a customer's identity. The term includes, but is not limited  
 159 to:

160 (a) A signature stamp, thumbprint stamp, or other tool or  
 161 device used to forge a customer's personal identification  
 162 information.

163 (b) An original of any type of personal identification  
 164 listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully  
 165 issued.

166 (c) A blank, forged, fictitious, or counterfeit instrument  
 167 in the similitude of any type of personal identification listed  
 168 in s. 560.310(2)(b) which would in context lead a reasonably  
 169 prudent person to believe that such instrument is an authentic  
 170 original of such personal identification.

171 (d) Counterfeit, fictitious, or fabricated information in  
 172 the similitude of a customer's personal identification  
 173 information that, although not authentic, would in context lead  
 174 a reasonably prudent person to credit its authenticity.

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175 (20)~~(19)~~ "Licensee" means a person licensed under this  
 176 chapter.  
 177 (21)~~(20)~~ "Location" means a branch office, mobile location,  
 178 or location of an authorized vendor whose business activity is  
 179 regulated under this chapter.  
 180 (22)~~(21)~~ "Monetary value" means a medium of exchange,  
 181 whether or not redeemable in currency.  
 182 (23)~~(22)~~ "Money services business" means any person located  
 183 in or doing business in this state, from this state, or into  
 184 this state from locations outside this state or country who acts  
 185 as a payment instrument seller, foreign currency exchanger,  
 186 check casher, or money transmitter.  
 187 (24)~~(23)~~ "Money transmitter" means a corporation, limited  
 188 liability company, limited liability partnership, or foreign  
 189 entity qualified to do business in this state which receives  
 190 currency, monetary value, or payment instruments for the purpose  
 191 of transmitting the same by any means, including transmission by  
 192 wire, facsimile, electronic transfer, courier, the Internet, or  
 193 through bill payment services or other businesses that  
 194 facilitate such transfer within this country, or to or from this  
 195 country.  
 196 (25)~~(24)~~ "Net worth" means assets minus liabilities,  
 197 determined in accordance with United States generally accepted  
 198 accounting principles.  
 199 (26)~~(25)~~ "Office" means the Office of Financial Regulation  
 200 of the commission.  
 201 ~~(26) "Officer" means an individual, other than a director,~~  
 202 ~~who participates in, or has authority to participate in, the~~  
 203 ~~major policymaking functions of a money services business,~~

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204 ~~regardless of whether the individual has an official title or~~  
 205 ~~receives a salary or other compensation.~~  
 206 (27) "Outstanding money transmission" means a money  
 207 transmission to a designated recipient or a refund to a sender  
 208 that has not been completed.  
 209 (28) "Outstanding payment instrument" means an unpaid  
 210 payment instrument whose sale has been reported to a licensee.  
 211 (29) "Payment instrument" means a check, draft, warrant,  
 212 money order, travelers check, electronic instrument, or other  
 213 instrument, payment of money, or monetary value whether or not  
 214 negotiable. The term does not include an instrument that is  
 215 redeemable by the issuer in merchandise or service, a credit  
 216 card voucher, or a letter of credit.  
 217 (30) "Payment instrument seller" means a corporation,  
 218 limited liability company, limited liability partnership, or  
 219 foreign entity qualified to do business in this state which  
 220 sells a payment instrument.  
 221 (31) "Person" means an individual, partnership,  
 222 association, trust, corporation, limited liability company, or  
 223 other group, however organized, but does not include a public  
 224 agency or instrumentality thereof.  
 225 (32) "Personal identification information" means a  
 226 customer's name that, alone or together with any of the  
 227 following information, may be used to identify that specific  
 228 customer:  
 229 (a) Customer's signature.  
 230 (b) Photograph, digital image, or other likeness of the  
 231 customer.  
 232 (c) Unique biometric data, such as the customer's



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thumbprint or fingerprint, voice print, retina or iris image, or other unique physical representation of the customer.

(33) "Publicly traded" means a stock is currently traded on a national securities exchange registered with the Securities and Exchange Commission, or traded on an exchange in a country other than the United States regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the Securities and Exchange Commission. ~~"Responsible person" means an individual who is employed by or affiliated with a money services business and who has principal active management authority over the business decisions, actions, and activities of the money services business in this state.~~

(34) "Sells" means to sell, issue, provide, or deliver.

(35) "Stored value" means funds or monetary value represented in digital electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

Section 2. Subsection (2) of section 560.118, Florida Statutes, is amended to read:

560.118 Reports.—

(2) Each licensee must submit quarterly reports to the office in a format and include information as specified by rule. The rule may require the report to contain a declaration by a control ~~an officer, or any other responsible~~ person authorized to make such declaration, that the report is true and correct to the best of her or his knowledge and belief.

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Section 3. Paragraph (d) of subsection (3) of section 560.123, Florida Statutes, is amended to read:

560.123 Florida Control of Money Laundering in Money Services Business Act.—

(3) A money services business shall keep a record of each financial transaction occurring in this state which it knows to involve currency or other payment instrument, as prescribed by the commission, having a value greater than \$10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of this section or chapter 896. The money services business must maintain appropriate procedures to ensure compliance with this section and chapter 896.

(d) A money services business, or control person officer, employee, or agent thereof, that files a report in good faith pursuant to this section is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

Section 4. Subsection (3) of section 560.126, Florida Statutes, is amended to read:

560.126 Required notice by licensee.—

(3) Each licensee must report any change in the control ~~partners, officers, members, joint venturers, directors, controlling shareholders, or responsible~~ persons of the licensee or changes in the form of business organization by written amendment in such form and at such time as specified by rule.

~~(a) If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a~~

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~~controlling interest in a licensee, such person or group must submit an application for licensure as a money services business or deferred presentment provider before such purchase or acquisition at such time and in such form as prescribed by rule. As used in this subsection, the term "controlling interest" means the same as described in s. 560.127.~~

~~(b) The addition of a control person partner, officer, member, joint venturer, director, controlling shareholder, or responsible person of the applicant who does not have a controlling interest and who has not previously complied with the applicable provisions of ss. 560.1401 and 560.141 is subject to such provisions. If the office determines that the licensee does not continue to meet the licensure requirements, the office may bring an administrative action in accordance with s. 560.114 to enforce the provisions of this chapter.~~

~~(c) The commission shall adopt rules providing for the waiver of the license application required by this subsection if the person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously complied with the applicable provisions of ss. 560.1401 and 560.141 under the same legal entity or is currently licensed under this chapter.~~

Section 5. Section 560.127, Florida Statutes, is repealed.

Section 6. Paragraphs (a) and (c) of subsection (1) of section 560.141, Florida Statutes, are amended to read:

560.141 License application.—

(1) To apply for a license as a money services business under this chapter, the applicant must submit:

(a) An application to the office on forms prescribed by

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rule which includes the following information:

1. The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business.

2. The date of the applicant's formation and the state in which the applicant was formed, if applicable.

3. The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each control person officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127.

4. A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded.

5. The applicant's history of operations in other states if applicable and a description of the money services business or deferred presentment provider activities proposed to be conducted by the applicant in this state.

6. If the applicant or its parent is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the preceding year.

7. The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors

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operating in this state. For each branch office and each location of an authorized vendor, the applicant shall include the nonrefundable fee required by s. 560.143.

8. The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments are drawn or through which the payment instruments are payable.

9. The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld.

10. The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each control ~~executive officer, director, controlling shareholder, and responsible person.~~

11. The name of the registered agent in this state for service of process unless the applicant is a sole proprietor.

12. Any other information specified in this chapter or by rule.

(c) Fingerprints for each person listed in subparagraph (a)3. for live-scan processing in accordance with rules adopted by the commission.

1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.

2. The Department of Law Enforcement must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation.

3. All fingerprints submitted to the Department of Law

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Enforcement must be submitted electronically and entered into the statewide automated fingerprint identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the Department of Law Enforcement to participate in the system and shall inform the Department of Law Enforcement of any person whose fingerprints no longer must be retained.

4. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.

5. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

6. For purposes of this paragraph, fingerprints are not required to be submitted if the applicant is a publicly traded corporation or is exempted from this chapter under s. 560.104(1). ~~The term "publicly traded" means a stock is currently traded on a national securities exchange registered with the federal Securities and Exchange Commission or traded on an exchange in a country other than the United States regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the commission.~~

~~7. Licensees initially approved before October 1, 2013, who are seeking renewal must submit fingerprints for each person listed in subparagraph (a)3. for live-scan processing pursuant to this paragraph. Such fingerprints must be submitted before renewing a license that is scheduled to expire between April 30, 2014, and December 31, 2015.~~

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407 Section 7. Subsection (1) of section 560.143, Florida  
 408 Statutes, is amended to read:  
 409 560.143 Fees.—  
 410 (1) LICENSE APPLICATION FEES.—The applicable non-refundable  
 411 fees must accompany an application for licensure:  
 412 (a) Part II.....\$375.  
 413 (b) Part III.....\$188.  
 414 (c) Per branch office.....\$38.  
 415 (d) For each location of an authorized  
 416 vendor.....\$38.  
 417 (e) Declaration as a deferred presentment  
 418 provider.....\$1,000.  
 419 (f) Fingerprint retention fees as prescribed by rule.  
 420 ~~(g) License application fees for branch offices and~~  
 421 ~~authorized vendors are limited to \$20,000 when such fees are~~  
 422 ~~assessed as a result of a change in controlling interest as~~  
 423 ~~defined in s. 560.127.~~  
 424 Section 8. For the purpose of incorporating the amendments  
 425 made by this act to sections 560.118 and 560.141, Florida  
 426 Statutes, in references thereto, paragraph (a) of subsection (4)  
 427 of section 559.952, Florida Statutes, is reenacted to read:  
 428 559.952 Financial Technology Sandbox.—  
 429 (4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE  
 430 REQUIREMENTS.—  
 431 (a) Notwithstanding any other law, upon approval of a  
 432 Financial Technology Sandbox application, the following  
 433 provisions and corresponding rule requirements are not  
 434 applicable to the licensee during the sandbox period:  
 435 1. Section 516.03(1), except for the application fee, the

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

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436 investigation fee, the requirement to provide the social  
 437 security numbers of control persons, evidence of liquid assets  
 438 of at least \$25,000, and the office's authority to investigate  
 439 the applicant's background. The office may prorate the license  
 440 renewal fee for an extension granted under subsection (7).  
 441 2. Section 516.05(1) and (2), except that the office shall  
 442 investigate the applicant's background.  
 443 3. Section 560.109, only to the extent that the section  
 444 requires the office to examine a licensee at least once every 5  
 445 years.  
 446 4. Section 560.118(2).  
 447 5. Section 560.125(1), only to the extent that the  
 448 subsection would prohibit a licensee from engaging in the  
 449 business of a money transmitter or payment instrument seller  
 450 during the sandbox period.  
 451 6. Section 560.125(2), only to the extent that the  
 452 subsection would prohibit a licensee from appointing an  
 453 authorized vendor during the sandbox period. Any authorized  
 454 vendor of such a licensee during the sandbox period remains  
 455 liable to the holder or remitter.  
 456 7. Section 560.128.  
 457 8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-  
 458 10. and (b), (c), and (d).  
 459 9. Section 560.142(1) and (2), except that the office may  
 460 prorate, but may not entirely eliminate, the license renewal  
 461 fees in s. 560.143 for an extension granted under subsection  
 462 (7).  
 463 10. Section 560.143(2), only to the extent necessary for  
 464 proration of the renewal fee under subparagraph 9.

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465 11. Section 560.204(1), only to the extent that the  
 466 subsection would prohibit a licensee from engaging in, or  
 467 advertising that it engages in, the selling or issuing of  
 468 payment instruments or in the activity of a money transmitter  
 469 during the sandbox period.  
 470 12. Section 560.205(2).  
 471 13. Section 560.208(2).  
 472 14. Section 560.209, only to the extent that the office may  
 473 modify, but may not entirely eliminate, the net worth, corporate  
 474 surety bond, and collateral deposit amounts required under that  
 475 section. The modified amounts must be in such lower amounts that  
 476 the office determines to be commensurate with the factors under  
 477 paragraph (5)(c) and the maximum number of consumers authorized  
 478 to receive the financial product or service under this section.  
 479 Section 9. For the purpose of incorporating the amendment  
 480 made by this act to section 560.141, Florida Statutes, in a  
 481 reference thereto, paragraph (c) of subsection (2) of section  
 482 560.114, Florida Statutes, is reenacted to read:  
 483 560.114 Disciplinary actions; penalties.—  
 484 (2) Pursuant to s. 120.60(6), the office may summarily  
 485 suspend the license of a money services business if the office  
 486 finds that a licensee poses an immediate, serious danger to the  
 487 public health, safety, and welfare. A proceeding in which the  
 488 office seeks the issuance of a final order for the summary  
 489 suspension of a licensee shall be conducted by the commissioner  
 490 of the office, or his or her designee, who shall issue such  
 491 order. The following acts are deemed to constitute an immediate  
 492 and serious danger to the public health, safety, and welfare,  
 493 and the office may immediately suspend the license of a money

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494 services business if:  
 495 (c) A natural person required to be listed on the license  
 496 application for a money services business pursuant to s.  
 497 560.141(1)(a)3. is criminally charged with, or arrested for, a  
 498 crime described in paragraph (1)(o), paragraph (1)(p), or  
 499 paragraph(1)(q).  
 500 Section 10. This act shall take effect October 1, 2022.

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2/10/22

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

SB 1536

Bill Number or Topic

Rules

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Commissioner Russ Weigel Phone \_\_\_\_\_

Address 101 E Gaines St Email Russell.Weigel@flofr.gov

Street

Tallahassee FL 32399

City

State

Zip

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

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

**Office of Financial Regulation**

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

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

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

S-001 (08/10/2021)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1680

INTRODUCER: Rules Committee and Senator Gruters

SUBJECT: Financial Institutions

DATE: February 10, 2022

REVISED: \_\_\_\_\_

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Schrader | Knudson        | BI        | <b>Favorable</b> |
| 2. Sanders  | Sadberry       | AP        | <b>Favorable</b> |
| 3. Schrader | Phelps         | RC        | <b>Fav/CS</b>    |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1680 makes a number of revisions to Florida law relating to financial institutions. The bill:

- Allows foreign nationals proposing to own 10 percent or more of any class of voting securities of a proposed or established bank to appear by video during the public hearing considering approval of the application;
- Revises the required scheduling dates for examination of financial institutions;
- Allows the Office of Financial Regulation (OFR) 90 additional days to meet its statutory obligation to periodically examine a financial institution when a federal agency suspends or cancels a previously scheduled examination;
- Changes from “all or substantially all” assets to 50 percent of assets, liabilities, or a combination of assets and liabilities, the limit of assets that a mutual financial institution may sell to a stock financial institution, absent first converting to a capital stock financial institution;
- Revises the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act;
- Requires credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, to notify the OFR;
- Revises the scope of the OFR’s investigation of applicants seeking authority to start a bank or trust company to include the need for bank and trust facilities in a target market as well as

in the primary service area, and the ability of the target market to support the proposed bank or trust company;

- Revises a requirement that the proposed president or chief executive officer of a proposed banking corporation have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years to allow the OFR to waive the five year requirement after considering specified factors;
- Requires persons acquiring a controlling interest in a state bank or state trust company through probate or trust notify the OFR within 90 days after acquiring such interest;
- Defines a “de novo branch” for the purposes of an existing de novo interstate branching provision;
- Authorizes a family trust company, licensed family trust company, or foreign licensed family trust company to maintain the deposit account, required under current law, with any bank that is insured by the Federal Deposit Insurance Corporation, or with any credit union insured by the National Credit Union Administration, either of which must be located within the United States;
- Revises when family trust companies, licensed family trust companies, or foreign licensed family trust companies must file a required annual renewal application;
- Allows international bank agencies and international branches to maintain a required deposit in banks outside of Florida, provided the deposit is in a bank within the United States; and
- Requires qualified limited service affiliates to suspend otherwise permissible activities if the jurisdiction of an international trust entity served by the qualified limited service affiliate is identified on the Financial Action Task Force’s list of High-Risk Jurisdictions subject to a Call for Action (black list) or on the list of Jurisdictions Under Increased Monitoring (grey list).
- Updates cross-references and makes conforming changes.

The bill does not impact state revenues or expenditures.

The bill is effective July 1, 2022.

## **II. Present Situation:**

### **Regulation of Financial Institutions**

Florida law defines the term “financial institution” broadly; the term includes “state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.”<sup>1</sup>

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<sup>1</sup> Section 655.005(1)(i), F.S.



However, not all financial institutions are expressly authorized to accept or hold deposits or certificates of deposits.<sup>2</sup>

### ***Dual Regulatory System***

Banks and credit unions may be either state or federally chartered. The Office of Financial Regulation (OFR) is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.<sup>3</sup>

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency.<sup>4</sup> National banks are required to be members of the Federal Reserve System; state banks may apply for membership.<sup>5</sup> The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.<sup>6</sup>

Federally chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).<sup>7</sup> Both state- and federally chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.<sup>8</sup>

### **Examination of Financial Institutions**

Pursuant to s. 655.045(1), F.S., the OFR is required to conduct an examination of each state financial institution at least every 18 months. The OFR is authorized to accept an examination from an appropriate federal regulatory agency or conduct a joint or concurrent examination of the institution with the federal agency. However, at least once every 36 months, the OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The alternating, joint, or concurrent examination authorized by this provision reduces regulatory burden on the financial institutions subject to dual regulation, and the OFR works in coordination with these federal agencies when possible.<sup>9</sup>

According to the OFR, many of the documents it must analyze in these examinations are paper files with digital copies not available. As such, examiners must be physically present at an institution to perform examinations. The COVID-19 pandemic has created issues in adhering to examination schedules. Additionally, other natural disasters (such as hurricanes) can create problematic examination environments.<sup>10</sup>

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<sup>2</sup> For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. See ss. 663.062, 663.063, 663.409, and 663.531, F.S.

<sup>3</sup> Section 655.012(1)(a), F.S.

<sup>4</sup> 12 U.S.C. s. 481.

<sup>5</sup> 12 U.S.C. s. 208.3 and 222.

<sup>6</sup> 12 U.S.C. s. 248.

<sup>7</sup> See 12 U.S.C. s. 1751, et. seq.

<sup>8</sup> Section 657.033, F.S.; 12 U.S.C. s. 1784.

<sup>9</sup> Office of Financial Regulation (OFR), *SB 1680 Analysis* (Jan. 12, 2022) (on file with the Senate Committee on Banking and Insurance).

<sup>10</sup> *Id.*

### **Financial Institution Acquisition of Assets and Assumption of Liabilities**

Current law allows a financial entity, under s. 655.414, F.S., to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. Similarly, subsection (6) of the statute states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, subject to certain conditions. For both of these provisions, the term “substantially all” is not defined and may be subject to some conjecture. According to the OFR, this undefined term has caused some confusion in the financial industry.<sup>11</sup>

### **Money Laundering and Terrorist Financing in Financial Institutions Act**

The Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act, under s. 655.50, F.S., was created to require the submission certain reports to the OFR and the maintenance of certain records involving currency or monetary instruments or suspicious activities where such reports and records deter the use of financial institutions to conceal, move, or provide proceeds relating to criminal or terrorist activities and if such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. Subsection (3) of the act defines “financial institutions” a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state. This definition is quite broad, and includes a number of entities over which the OFR generally does not have regulatory authority—such as the United States Postal Service, casinos, travel agencies—or are obsolete—such as telegraph companies.<sup>12</sup>

### **Credit Union Boards of Directors**

Section 657.021(1)-(6), F.S., specifies the minimum requirements for boards of directors for credit unions, including the filling of vacancies, meeting requirements, and conduct requirements. As part of these requirements, subsection (2) requires directors assuming office in a credit union make a prescribed oath, and a signed copy of the oath must be filed with the OFR within 30 days after election. According to the OFR, at the Federal-level, the NCUA historically required credit unions to submit a record of the names and addresses of the members of the board of directors, members of the committees on a particular form called “Report of Officials.” The OFR had access to these documents through agreements with the NCUA. However, in 2009, the NCUA moved to a web-based system to collect this data and the forms were no longer collected.<sup>13</sup> At present, Florida law does not require state-chartered credit unions to submit a similar report.

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<sup>11</sup> *Supra* note 16, p. 4.

<sup>12</sup> The world’s last telegram was sent in 2013. Monica Sarkar, *The Day Telegrams Came to a Final STOP*, CNN (July 15, 2013).

<sup>13</sup> National Credit Union Administration (NCUA), *NCUA Supervisory Letter 09-CU-17*, “Credit Union Online: Credit Union Profile and 5300 Call Report,” available at <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/credit-union-online-credit-union-profile-and-5300-call-report> (August 2009).

## Target Markets

According to the American Bankers Association, nearly 75 percent of United States residents most often access their bank accounts via electronic platforms (i.e., via mobile device or personal computer).<sup>14</sup> With this ever-growing trend, and branch traffic slowing, many banks have been closing bank branches at a growing pace and making investments in electronic platforms.<sup>15</sup>

While the trend in banking has been to de-emphasize the local branch, a Florida application for authority to organize a banking corporation or trust company must describe the community where the principal office of the bank will be located<sup>16</sup> and part of the OFR's approval process looks at the need for, and ability to support, the proposed bank or trust company in the entity's primary service area.<sup>17</sup> In order for an application to be approved, the local conditions in the primary service area must indicate a reasonable promise of successful operation.<sup>18</sup> The OFR evaluates the viability of the business plan in light of current conditions in the primary service area and the metropolitan statistical area or county, as well as in the industry in general.<sup>19</sup>

## Applications for Authority to Organize a Banking Corporation or Trust Company

Section 658.19, F.S., specifies the requirements for an application for authority to organize a banking corporation or trust company, which must be filed with the OFR by the proposed directors, and what the application must include. Upon the submission of this application, pursuant to s. 658.20, F.S., the OFR must investigate the:

- Character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors;
- Need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located; and
- Ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

Section 658.20, F.S., also authorizes the OFR to obtain criminal record information from the National Crime Information Center or from the Florida Department of Law Enforcement to conduct the required investigation.

To approve an application, the OFR must find, in part, that:<sup>20</sup>

- Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company;
- The proposed capitalization is in such amount as the OFR deems adequate;
- The proposed capital structure is in such form as the OFR may require;

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<sup>14</sup> American Bankers Association, *Survey: Bank Customers Preference for Digital Channels Continues to Grow*, <https://bankingjournal.aba.com/2019/11/aba-survey-customer-preference-for-digital-banking-continues-to-grow> (Nov. 5, 2019).

<sup>15</sup> *Id.*

<sup>16</sup> Section 658.19, F.S.

<sup>17</sup> Section 658.20, F.S.

<sup>18</sup> Rule 69U-105.206(2)(a), F.A.C.

<sup>19</sup> Rule 69U-105.206(2)(a)1.-2., F.A.C.

<sup>20</sup> Section 658.21, F.S.

- The proposed officers have sufficient financial institution experience, ability, standing, and reputation in order to be approved. As part of this requirement, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years;
- The corporate name of the proposed state bank or trust company is approved by the OFR; and
- Provision has been made for suitable quarters at the location specified in the application.

In regards to the requirement that the proposed president or chief executive officer have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years, the OFR has expressed a concern that this provision narrows the pool of otherwise qualified potential executive officers who may serve in that capacity at a new Florida-chartered bank. By comparison, proposed chief executive officers of proposed nationally chartered banks are not subject to a similar restriction.<sup>21</sup>

### **Trust Representative Offices**

According to 12 C.F.R. s. 9.2(k), a trust representative office is an office of a national bank, other than a main office or a branch, at which the bank engages in certain activities relating to their fiduciary business. Examples of such activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer; and inspecting or maintaining custody of fiduciary assets or holding title to real property.

In Florida, the OFR supervises state-chartered banks with trust powers and state-chartered trust companies. The determination of whether an entity qualifies as a “trust company” is dependent on whether an entity has “trust powers” and is engaging in “trust business,” defined as follows:<sup>22</sup>

- “Trust powers” means the rights and powers necessary to act as a fiduciary and, when the context so requires or admits, the term also means the authority granted to a bank, state or federal association, or trust company by, or pursuant to, the laws of this or any other jurisdiction to engage in trust business; and
- “Trust business” means the business of acting as a fiduciary when such business is conducted by a bank, a state or federal association, or a trust company, or when conducted by any other business organization for compensation that the OFR does not consider to be de minimis.

Based on this definition, an office that provides just ancillary fiduciary services to a nationally-chartered bank or trust company (or one chartered by another state) would not qualify as a trust company.

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<sup>21</sup> *Supra* note 16.

<sup>22</sup> Section 658.12, F.S.

### **Controlling Interests in State Banks and Trust Companies**

Under s. 658.28, F.S., for the purposes of determining whether a party has acquired control of a bank or trust company, in general, a party will be presumed to have such control if any of the following are true:

- The party directly or indirectly owns, control, or has the power to vote 25 percent or more of any class of voting securities of the institution;
- The party controls, in any manner, the election of a majority of the directors, trustees, or other governing body of the institution;
- The party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution; or
- The OFR determines, after notice and opportunity for a hearing, that the person or persons directly or indirectly exercises a controlling influence over the bank or trust company.

In addition, the OFR is not limited to the above standards or criteria in determining whether any such person may be deemed to be acting by or through one or more other persons. The presumption above, regarding where a party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution, is rebuttable by notifying the OFR and presenting information rebutting control at an informal conference.<sup>23</sup> After such hearing, if the OFR determines that the party in question does, in fact, have control of the bank or trust company, the party must file the application required under s. 658.28(1), F.S.

Section 658.28(1), F.S., also requires persons seeking to purchase or otherwise acquire controlling interest in a state bank or trust company, to first apply with the OFR for a certificate of approval. Approval is based upon the OFR's determination, after investigation and review, that the proposed new owners are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company and that the interests of the other stockholders, if any, the depositors and creditors of the bank or trust company, and the public generally will not be jeopardized by the proposed change.

Florida law does not currently contemplate the acquisition of a controlling interest without prior approval. However, according to the OFR, not every such acquisition is planned. Shares may pass to an unapproved owner by operation of law, such as by way of inheritance. For example, if a controlling shareholder dies and their shares pass to an unapproved beneficiary, the unapproved beneficiary commits an unavoidable, technical violation of statute upon becoming the owner of the shares.<sup>24</sup>

### **De Novo Interstate Branching by State Banks**

Section 658.2953(11)(a), F.S., permits state banks to, with approval of the OFR, establish and maintain a de novo branch or acquire a branch in a state other than Florida by submitting an

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<sup>23</sup> Section 658.28(3), F.S.

<sup>24</sup> *Supra* note 16.

application to the OFR. Section 658.2953(11)(a), F.S., also allows out-of-state bank meeting certain conditions to establish and maintain a de novo branch or acquire a branch in Florida.

### **Family Trust Companies**

A family trust company provides trust services to wealthy families and cannot provide services to the general public. These services include serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A family might wish to form a family trust company in order to keep family matters more private than they would be if turned over to an independent trustee, to gain liability protection, to establish its own trust fee structure, and to obtain tax advantages. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.

In 2014, the Legislature authorized the creation of family trust companies in Florida.<sup>25</sup> The Florida Family Trust Company Act (act) is codified in ch. 662, F.S. The act allows for the creation of family trust companies in Florida and provides differing degrees of regulatory oversight by the OFR.

Chapter 662, F.S., creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies. A “family trust company” is a corporation or limited liability company that is exclusively owned by one or more family members, is organized or qualified to do business in this state, and acts or proposes to act as a fiduciary to serve one or more family members.<sup>26</sup> A “licensed family trust company” means a family trust company that has been issued a license that has not been revoked or suspended by the OFR.<sup>27</sup> A “foreign licensed family trust company” means a family trust company that is licensed by a state other than Florida, or the District of Columbia.<sup>28</sup> Family trust companies that are not licensed and foreign family trust companies must register with the OFR and renew such registration annually.<sup>29</sup> Family trust companies and licensed family trust companies must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.<sup>30</sup>

### **Asset Maintenance or Capital Equivalency for International Bank Agencies and International Branches**

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution in regards to loans, extension of credit, or investment. An international bank agency may act as custodian and may furnish investment

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<sup>25</sup> Chapter 2014-97, Laws of Fla.

<sup>26</sup> See s. 662.111(12), F.S., and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members

<sup>27</sup> See s. 662.111(16), F.S.

<sup>28</sup> See s. 662.111(15), F.S.

<sup>29</sup> See ss. 662.122 and 662.128, F.S.

<sup>30</sup> Section 662.1225(1), F.S.

management, and investment advisory services, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international, foreign, or domestic investments.<sup>31</sup> An international branch has the same rights and privileges as a federally-licensed international branch.<sup>32</sup> Under s. 663.07, F.S., each international bank agency and international branch must maintain, with one or more banks in this state evidence of dollar deposits or investment securities, as specified by the OFR, of the type that may be held by a state bank.

### **Financial Action Task Force (FATF)**

The FATF is an international global money laundering and terrorist financing watchdog group. It is an intergovernmental policy-making body that sets international standards and advocates to bring about national legislative and regulatory reforms.<sup>33</sup> The FATF currently comprises 39 member jurisdictions and two regional organizations (the European Council and the Gulf Cooperation Council). These members represent most major global financial centers.<sup>34</sup> As part of its activities, the FATF publishes, three times per year, two public documents that identify jurisdictions having weak measures to combat money laundering and terrorist financing: 1) High-Risk Jurisdictions subject to a Call for Action, and 2) Jurisdictions under Increased Monitoring.<sup>35</sup>

#### ***High-Risk Jurisdictions subject to a Call for Action***

According to the FATF, the jurisdictions identified on the High-Risk Jurisdictions subject to a Call for Action (also known as the “black list”) have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For such jurisdictions, the FATF calls on all of its members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing risks emanating from the country.<sup>36</sup> Due to the ongoing COVID-19 pandemic, the FATF has paused the review process for countries on the list of High-Risk Jurisdictions subject to a Call for Action given that the countries on the list—North Korea and Iran—are already subject to the FATF’s call for countermeasures.<sup>37</sup>

#### ***Jurisdictions under Increased Monitoring***

Jurisdictions identified as being under increased monitoring (also known as the “grey list”) by the FATF are actively working with the organization to address strategic deficiencies in their

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<sup>31</sup> Section 663.061, F.S.

<sup>32</sup> Section 663.064, F.S.

<sup>33</sup> Financial Action Task Force, *About*, <https://www.fatf-gafi.org/about/> (last visited Jan. 21, 2022).

<sup>34</sup> Financial Action Task Force, *FATF Members and Observers*, <https://www.fatf-gafi.org/about/membersandobservers/> (last visited Jan. 21, 2022).

<sup>35</sup> Financial Action Task Force, *Topic: High-risk and other monitored jurisdictions*, [https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc(fatf_releasedate)) (last visited Jan. 21, 2022).

<sup>36</sup> *Id.*

<sup>37</sup> Financial Action Task Force, *High-Risk Jurisdictions subject to a Call for Action - October 2021*, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-october-2021.html> (Oct. 21, 2021) (last visited Jan. 21, 2022).

regimes to counter money laundering, terrorist financing, and proliferation financing. Jurisdictions identified as such are subject to increased monitoring, but have committed to swiftly resolve the deficiencies identified by the FATF within an agreed upon timeframe.<sup>38</sup>

### **Qualified Limited Service Affiliates of International Trust Entities (QLSA)**

Part IV of ch. 663, F.S., regulates QLSAs in Florida. Pursuant to s. 663.530, F.S., a QLSA means a person or entity that is qualified under this part to perform the permissible activities outlined in s. 663.531, F.S., related to or for the benefit of an affiliated international trust entity. This section also defines an “international trust entity” as an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised. Section 663.531(1), F.S., allows a QLSA to engage in:

- Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- Advertising and marketing at trade, industry, or professional events;
- Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

To qualify as a QLSA, the entity must file a written notice with the OFR that includes, in part, a declaration (under penalty of perjury) that jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.<sup>39</sup> While this is a required disclosure, the OFR asserts that it does not have a mechanism to suspend or revoke the qualification of the QLSA if the jurisdiction of the international trust entity is later added to this list.<sup>40</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 120.80(3)(a), F.S., to allow a foreign national proposing to own or control 10 percent or more of any class of voting securities of a proposed or established bank, trust company, or capital stock savings association to appear at the public hearing required to be held for such matter via video conference in lieu of appearing personally.

<sup>38</sup> Financial Action Task Force, *Jurisdictions under Increased Monitoring – October 2021*, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2021.html> (Oct. 21, 2021) (last visited Jan. 21, 2022.). Countries currently on the grey list, as of the most recent October 2021 update are: Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Jordan, Mali, Malta, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Turkey, Uganda, Yemen, and Zimbabwe. Botswana and Mauritius were most recently removed from the list.

<sup>39</sup> Section 663.532(1)(i)3., F.S.

<sup>40</sup> *Supra* note 16.



**Section 2** amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

**Section 3** amends s. 518.117, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

**Section 4** amends s. 655.045(1)(a), F.S., which requires OFR to examine state financial institutions at least once during every 36 months after July 1, 2014, if the OFR accepted an examination by an appropriate federal regulatory agency or conducted a joint or concurrent examination rather than solely performing the exam itself. The bill changes the specific date of July 1, 2014, to July 1, 2023, which the scheduling of such examinations conducted by OFR are pegged to.

The section also creates s. 655.045(1)(f), F.S., to allow the Office of Financial Regulation (OFR) an additional 90 days to meet the examination frequency requirement under the section when a federal agency suspends or cancels a previously scheduled examination. The examination requirement would be considered to have been met upon the federal agency in question conducting the examination—or the OFR conducting the examination instead.

The section also amends s. 655.045(4), F.S., to require each director of a state financial institution to sign a receipt regarding an examination report, with the signature certifying that the director has read the report. The signed receipt must be returned to the OFR.

**Section 5** amends s. 655.414, F.S., to revise language allowing financial entities to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. The bill updates this language to read “50 percent or more of the assets of, liabilities of, or a combination of assets and liabilities of.” The 50 percent is calculated based on the most recent quarterly reporting date.

Similarly, subsection (6) of the section presently states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, without certain conditions being met. The bill also updates this to read “50 percent or more.”

**Section 6** amends s. 655.50, F.S., to revise the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act. The definition is changed to repeal a reference to federal law and to instead mean any financial institution, as defined in Florida law,<sup>41</sup> other than an international representative office, an international administrative office, or a qualified limited service affiliate.

**Section 7** creates s. 657.021(2), F.S., to require credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, to submit to the OFR the names and residence addresses of the elected persons on a specified form. The provision also directs the OFR to adopt rules to create the form.

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<sup>41</sup> Section 655.005(1)(i), F.S.

**Section 8** repeals s. 657.028(6), F.S., which requires notice to the OFR of changes in management similar to those created in **Section 7** of this bill.

**Section 9** amends s. 658.12, F.S., to create a definition for “target market” to mean the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

**Section 10** amends s. 658.20, F.S., to incorporate the definition of target market created in **Section 9** and effectively expand the scope of the OFR’s investigation (regarding an application for authority to organize a bank or trust company) to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company.

**Section 11** amends s. 658.21, F.S., to revise a requirement that, for the OFR to approve an application for authority to organize a banking corporation or trust company, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years. The revision permits the OFR to waive the five-year requirement after considering the following regarding the proposed state bank or trust company:

- The adequacy of the overall experience and expertise of the proposed president or chief executive officer;
- The likelihood of successful operation;
- The adequacy of the proposed capitalization;
- The proposed capital structure;
- The experience of the other proposed officers and directors; and
- Any other relevant data or information.

**Section 12** creates s. 658.28, F.S., to create a requirement that persons acquiring a controlling interest in a state bank or state trust company through probate or trust notify the office within 90 days after acquiring such interest. The bill also stipulates that this interest does not give rise to a presumption of control unless such persons votes the shares or the office has issued a certificate of approval in response to an application approval of change control pursuant to subsection (1) of the section.

**Section 13** amends s. 658.2953, F.S., to create a definition of “de novo branch” to mean a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of specified transactions. This clarifies the applicability of s. 658.2953(11), F.S., which regulates de novo interstate branching, but currently does not define the term.

**Section 14** amends s. 662.1225, F.S., to allow a family trust company, licensed family trust company, or foreign licensed family trust company to maintain the deposit account, required under the section, with any bank that is both insured by the Federal Deposit Insurance

Corporation and located in the United States, or with a credit union insured by the National Credit Union Administration and located in the United States. Under current law, such companies were limited to only state-chartered or national financial institution that has a principal or branch office in Florida.

**Section 15** amends s. 662.128, F.S., to require family trust companies, licensed family trust companies, or foreign licensed family trust companies to file an annual renewal application no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application. The previous requirement under s. 662.128, F.S., has also been retained in the section, specifying that such entities must file their renewal 45 days after the end of each calendar year. As presently written, this may require entities, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year.

**Section 16** amends s. 633.07, F.S., to allow international bank agencies and international branches to maintain the required deposit amount under the section with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States. Under current law, the deposit had to be maintained at a bank in Florida.

**Section 17** amends s. 663.532, F.S., to require qualified limited service affiliates (QLSA) to suspend the activities the QLSA is otherwise permitted to engage in, under s. 663.408, F.S., if the QLSA or the OFR becomes aware that the jurisdiction of an international trust entity served by the QLSA is included on the Financial Action Task Force (FATF) list of High-Risk Jurisdictions subject to a Call for Action (black list) or list of Jurisdictions Under Increased Monitoring (grey list). Such a suspension of activities must continue until the jurisdiction in question is removed from the FATF black list or grey list.

As of the most recent October 2021 update, the following countries are on the FATF grey list: Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Jordan, Mali, Malta, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Turkey, Uganda, Yemen, and Zimbabwe.<sup>42</sup> Presently, North Korea and Iran are on the FATF black list.<sup>43</sup>

**Section 18** amends s. 736.0802, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

**Section 19** reenacts s. 658.165(1), F.S., to incorporate the amendments made in the bill to s. 658.20, F.S.

**Section 20** provides an effective date of July 1, 2022.

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<sup>42</sup>Financial Action Task Force, *Jurisdictions under Increased Monitoring – October 2021*, <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-october-2021.html> (last visited Jan. 21, 2022).

<sup>43</sup>Financial Action Task Force, *High-Risk Jurisdictions subject to a Call for Action – October 2021*, <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-october-2021.html> (last visited Jan. 21, 2022). See also, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html> (last visited Jan. 21, 2022).

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

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared tax revenues as specified in Art. VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

While the bill may encourage the formation of new Florida-chartered institutions, which would have a positive impact on employment, economic growth, investment and access to financial services, the impact to the private sector is indeterminate.

**C. Government Sector Impact:**

The bill does not impact state revenues or expenditures.<sup>44</sup> However, **Section 4** of the bill could lead to the Office of Financial Regulation (OFR) taking on additional examination costs in the event that a federal agency suspends or cancels a financial institution examination and the OFR ends up conducting the examination in that agency's stead.

**VI. Technical Deficiencies:**

None.

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<sup>44</sup> *Supra* note 16, p. 9.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 120.80, 475.01, 518.117, 655.045, 655.414, 655.50, 657.021, 657.028, 658.12, 658.20, 658.21, 658.28, 658.2953, 662.1225, 662.128, 663.07, 663.532, and 736.0802.

This bill reenacts section 658.165 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Rules on February 10, 2022:**

The committee substitute:

- Removes a provision of the bill making the direct or indirect charging of a customer a fee, by a third-party agent or other entity, for an online audit verification of the associated balance of an account which is maintained by a financial institution, a violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).
- Restores a provision in existing law that, for the OFR to approve an application for authority to organize a banking corporation or trust company, the proposed president or chief executive officer must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. The amendment also adds that OFR can waive this 5 year requirement based on certain considerations.
- Makes technical and conforming changes.

**B. Amendments:**

None.



510104

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 02/10/2022 | . |       |
|            | . |       |
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The Committee on Rules (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

120.80 Exceptions and special requirements; agencies.—

(3) OFFICE OF FINANCIAL REGULATION.—

(a) Notwithstanding s. 120.60(1), in proceedings for the  
issuance, denial, renewal, or amendment of a license or approval  
of a merger pursuant to title XXXVIII:



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12           1.a. The Office of Financial Regulation of the Financial  
13 Services Commission shall have published in the Florida  
14 Administrative Register notice of the application within 21 days  
15 after receipt.

16           b. Within 21 days after publication of notice, any person  
17 may request a hearing. Failure to request a hearing within 21  
18 days after notice constitutes a waiver of any right to a  
19 hearing. The Office of Financial Regulation or an applicant may  
20 request a hearing at any time prior to the issuance of a final  
21 order. Hearings shall be conducted pursuant to ss. 120.569 and  
22 120.57, except that the Financial Services Commission shall by  
23 rule provide for participation by the general public.

24           2. Should a hearing be requested as provided by sub-  
25 subparagraph 1.b., the applicant or licensee shall publish at  
26 its own cost a notice of the hearing in a newspaper of general  
27 circulation in the area affected by the application. The  
28 Financial Services Commission may by rule specify the format and  
29 size of the notice.

30           3. Notwithstanding s. 120.60(1), and except as provided in  
31 subparagraph 4., an application for license for a new bank, new  
32 trust company, new credit union, new savings and loan  
33 association, or new licensed family trust company must be  
34 approved or denied within 180 days after receipt of the original  
35 application or receipt of the timely requested additional  
36 information or correction of errors or omissions. An application  
37 for such a license or for acquisition of such control which is  
38 not approved or denied within the 180-day period or within 30  
39 days after conclusion of a public hearing on the application,  
40 whichever is later, shall be deemed approved subject to the



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satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, a new credit union, or a new licensed family trust company by the appropriate insurer.

4. In the case of an application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of an application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of such foreign national to appear personally at or to participate through video conference in the hearing shall be grounds for denial of the application. Notwithstanding s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

Section 2. Subsection (4) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless





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the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12 ~~s. 658.12(23)~~.

Section 3. Section 518.117, Florida Statutes, is amended to read:

518.117 Permissible investments of fiduciary funds.—A fiduciary that is authorized by lawful authority to engage in trust business as defined in s. 658.12 ~~s. 658.12(20)~~ may invest fiduciary funds in accordance with s. 660.417 so long as the investment otherwise complies with this chapter.

Section 4. Paragraph (a) of subsection (1) and subsection (4) of section 655.045, Florida Statutes, are amended, and paragraph (f) is added to subsection (1) of that section, to read:

655.045 Examinations, reports, and internal audits; penalty.—

(1) The office shall conduct an examination of the condition of each state financial institution at least every 18 months. The office may conduct more frequent examinations based upon the risk profile of the financial institution, prior examination results, or significant changes in the institution or its operations. The office may use continuous, phase, or other flexible scheduling examination methods for very large or complex state financial institutions and financial institutions owned or controlled by a multi-financial institution holding company. The office shall consider examination guidelines from federal regulatory agencies in order to facilitate, coordinate, and standardize examination processes.

(a) The office may accept an examination of a state



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financial institution made by an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. However, if the office accepts an examination in accordance with this paragraph, the office shall conduct at least once during each 36-month period beginning July 1, 2023 ~~2014, a subsequent the office shall conduct an~~ examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The office may furnish a copy of all examinations or reviews made of financial institutions or their affiliates to the state or federal agencies participating in the examination, investigation, or review, or as otherwise authorized under s. 655.057.

(f) In coordinating an examination required under this section, if a federal agency suspends or cancels a previously scheduled examination of a state financial institution, the office has an additional 90 days to meet the examination requirement of this section. In such case, the requirement is deemed met by the federal agency conducting the examination or upon the office conducting the examination instead.

(4) A copy of the report of each examination must be furnished to the state financial institution entity examined and presented to the board of directors at its next regular or special meeting. Each director shall review the report and acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the office.



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Section 5. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—  
With prior approval of the office, and upon such conditions as the commission prescribes by rule, a financial institution ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~ of the assets of, liabilities of, or a combination of assets and ~~or assume all or any part of the~~ liabilities of, any other financial institution in accordance with the procedures and subject to the following conditions and limitations:

(1) CALCULATION OF ASSET OR LIABILITY PERCENTAGES.—  
Percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

(2) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on terms that are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation, if applicable, of the transferring financial institution upon execution of the plan, or a provision setting forth the business plan for the continued operation of each financial institution after the execution of the plan.



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(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution.

(e) If a stock financial institution is the transferring financial institution and the proposed sale is not for cash, a clear and concise statement that dissenting stockholders of the institution are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the acquisition, assumption, or sale and such other information and provisions as necessary to execute the transaction or as required by the office.

(3)~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have an adequate capital structure in relation to their activities and their deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

If the office disapproves the plan, it shall state its objections and give the parties an opportunity to amend the plan to overcome such objections.

(4)~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office



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approves the plan, it may be submitted to the members or stockholders of the transferring financial institution at an annual meeting or at a special meeting called to consider such action. Upon a majority vote of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote of the members present at the meeting, the plan is adopted.

(5)~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution, the president or vice president and the cashier, manager, or corporate secretary of such institution shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions have complied with all applicable state and federal law and rules, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or stockholders or certification by the office, the board of directors of the transferring financial institution may abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

(6)~~(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution, all participants must



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also comply with requirements imposed by federal and other state law for the acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution is a federal or out-of-state state-chartered financial institution and the transferring state financial entity will be liquidated, approval of the office is not required.

(7)~~(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell 50 percent or more ~~all or substantially all~~ of its assets to a stock financial institution until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations also refer to credit unions but, in the case of a credit union, the provision concerning proxy statements does not apply.

Section 6. Paragraph (c) of subsection (3) of section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

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

(c) “Financial institution” has the same meaning as in s. 655.005(1)(i), excluding an international representative office, an international administrative office, or a qualified limited service affiliate ~~means a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state.~~



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Section 7. Present subsections (2) through (8) of section 657.021, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

657.021 Board of directors; executive committee responsibilities; oaths; reports to the office.—

(2) Within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union shall submit to the office the names and residence addresses of the elected or appointed persons on a form adopted by the commission and provided by the office.

Section 8. Subsection (6) of section 657.028, Florida Statutes, is amended to read:

657.028 Activities of directors, officers, committee members, employees, and agents.—

~~(6) Within 30 days after election or appointment, a record of the names and addresses of the members of the board, members of committees, all officers of the credit union, and the credit manager shall be filed with the office on forms prescribed by the commission.~~

Section 9. Present subsections (20) through (24) of section 658.12, Florida Statutes, are redesignated as subsections (21) through (25), respectively, and a new subsection (20) is added to that section, to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:



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(20) "Target market" means the group of clients or potential clients from whom:

(a) A bank or proposed bank expects to draw deposits and to whom the bank or proposed bank focuses or intends to focus its marketing efforts; or

(b) A trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or association expects to draw its fiduciary accounts and to whom the trust company, the trust department of a bank or association, the proposed trust company, or the proposed trust department of a bank or association focuses or intends to focus its marketing efforts.

Section 10. Paragraphs (b) and (c) of subsection (1) of section 658.20, Florida Statutes, are amended to read:

658.20 Investigation by office.—

(1) Upon the filing of an application, the office shall make an investigation of:

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located or the need for the target market that the bank or trust company intends to engage with in business.

(c) The ability of the primary service area or target market to support the proposed bank or trust company and all other existing bank or trust facilities that serve the same primary service area or target market ~~in the primary service area.~~

Section 11. Subsections (1) and (4) of section 658.21, Florida Statutes, are amended to read:





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658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(1) Local and target market conditions indicate reasonable promise of successful operation for the proposed state bank or trust company. In determining whether an applicant meets the requirements of this subsection, the office shall consider all materially relevant factors, including:

(a) The purpose, objectives, and business philosophy of the proposed state bank or trust company.

(b) The projected financial performance of the proposed bank or trust company.

(c) The feasibility of the proposed bank or trust company, as stated in the business plan, particularly with respect to asset and liability growth and management.

(4) (a) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law.

(b) At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years before the date of the application. However, if the applicant demonstrates that at



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least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application, the office may modify the requirement and allow the applicant to have only one director who has direct financial institution experience within the last 5 years.

(c) The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. The office may waive this requirement after considering:

1. The adequacy of the overall experience and expertise of the proposed president or chief executive officer;

2. The likelihood of successful operation of the proposed state bank or trust company pursuant to subsection (1);

3. The adequacy of the proposed capitalization under subsection (2);

4. The proposed capital structure under subsection (3);

5. The experience of the other proposed officers and directors; and

6. Any other relevant data or information.

Section 12. Present subsections (2), (3), and (4) of section 658.28, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

658.28 Acquisition of control of a bank or trust company.—

(2) If a person or a group of persons, directly or indirectly, acquires a controlling interest in a state bank or state trust company, as contemplated by this section, through



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probate or trust, the person or group of persons shall notify  
the office within 90 days after acquiring such an interest. Such  
an interest does not give rise to a presumption of control until  
the person or group of persons votes the shares or the office  
has issued a certificate of approval in response to an  
application pursuant to subsection (1).

Section 13. Present paragraphs (a), (b), and (c) of  
subsection (11) of section 658.2953, Florida Statutes, are  
redesignated as paragraphs (b), (c), and (d), respectively, and  
a new paragraph (a) is added to that subsection, to read:

658.2953 Interstate branching.—

(11) ~~DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—~~

(a) As used in this subsection, the term “de novo branch”  
means a branch of a bank which is originally established by the  
bank as a branch and does not become a branch of such bank as a  
result of:

1. The bank’s acquisition of another bank or of a branch of  
another bank; or

2. The conversion, merger, or consolidation of any bank or  
branch.

Section 14. Paragraph (d) of subsection (1) and paragraph  
(d) of subsection (2) of section 662.1225, Florida Statutes, are  
amended to read:

662.1225 Requirements for a family trust company, licensed  
family trust company, or foreign licensed family trust company.—

(1) A family trust company or a licensed family trust  
company shall maintain:

(d) A deposit account with:

1. A bank located in the United States and insured by the



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Federal Deposit Insurance Corporation; or

2. A credit union located in the United States and insured  
by the National Credit Union Administration ~~a state-chartered or~~  
~~national financial institution that has a principal or branch~~  
~~office in this state.~~

(2) In order to operate in this state, a foreign licensed family trust company must be in good standing in its principal jurisdiction, must be in compliance with the family trust company laws and regulations of its principal jurisdiction, and must maintain:

(d) A deposit account with:

1. A bank located in the United States and insured by the  
Federal Deposit Insurance Corporation; or

2. A credit union located in the United States and insured  
by the National Credit Union Administration ~~a state-chartered or~~  
~~national financial institution that has a principal or branch~~  
~~office in this state.~~

Section 15. Subsection (1) of section 662.128, Florida Statutes, is amended to read:

662.128 Annual renewal.—

(1) ~~Within 45 days after the end of each calendar year, A~~  
family trust company, licensed family trust company, or foreign  
licensed family trust company shall file an ~~its~~ annual renewal  
application with the office on an annual basis no later than 45  
days after the anniversary of the filing of either the initial  
application or the prior year's renewal application.

Section 16. Subsection (1) of section 663.07, Florida Statutes, is amended to read:

663.07 Asset maintenance or capital equivalency.—



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(1) Each international bank agency and international branch shall:

(a) Maintain with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States ~~in this state~~, in such amounts as the office specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or

2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

The commission shall prescribe, by rule, the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

Section 17. Present subsections (4), (5), and (6) of section 663.532, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, a new subsection



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(4) is added to that section, and paragraphs (i) and (j) of subsection (1) of that section are amended, to read:

663.532 Qualification.—

(1) To qualify as a qualified limited service affiliate under this part, a proposed qualified limited service affiliate must file a written notice with the office, in the manner and on a form prescribed by the commission. Such written notice must include:

(i) A declaration under penalty of perjury signed by the executive officer, manager, or managing member of the proposed qualified limited service affiliate that, to the best of his or her knowledge:

1. No employee, representative, or agent provides, or will provide, banking services; promotes or sells, or will promote or sell, investments; or accepts, or will accept, custody of assets.

2. No employee, representative, or agent acts, or will act, as a fiduciary in this state, which includes, but is not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.

3. The jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring ~~Force Public~~



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~~Statement or on its list of jurisdictions with deficiencies in  
anti-money laundering or counterterrorism.~~

(j) For each international trust entity that the proposed  
qualified limited service affiliate will provide services for in  
this state, the following:

1. The name of the international trust entity;

2. A list of the current officers and directors of the  
international trust entity;

3. Any country where the international trust entity is  
organized or authorized to do business;

4. The name of the home-country regulator;

5. Proof that the international trust entity has been  
authorized by charter, license, or similar authorization by its  
home-country regulator to engage in trust business;

6. Proof that the international trust entity lawfully  
exists and is in good standing under the laws of the  
jurisdiction where it is chartered, licensed, or organized;

7. A statement that the international trust entity is not  
in bankruptcy, conservatorship, receivership, liquidation, or in  
a similar status under the laws of any country;

8. Proof that the international trust entity is not  
operating under the direct control of the government or the  
regulatory or supervisory authority of the jurisdiction of its  
incorporation, through government intervention or any other  
extraordinary actions, and confirmation that it has not been in  
such a status or under such control at any time within the prior  
3 years;

9. Proof and confirmation that the proposed qualified  
limited service affiliate is affiliated with the international



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trust entities provided in the notice; and

10. Proof that the jurisdictions where the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or that facilitate the financial services functions, banking, or fiduciary activities of the international trust entity are not listed on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring ~~Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.~~

The proposed qualified limited service affiliate may provide additional information in the form of exhibits when attempting to satisfy any of the qualification requirements. All information that the proposed qualified limited service affiliate desires to present to support the written notice must be submitted with the notice.

(4) The qualified limited service affiliate shall suspend the permissible activities provided in s. 663.531 relating to a specific jurisdiction if the qualified limited service affiliate becomes aware that the jurisdiction of an international trust entity served by the qualified limited service affiliate is included on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring. Suspensions under this subsection must remain in effect until the jurisdiction is removed from the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of





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Jurisdictions under Increased Monitoring.

Section 18. Paragraph (a) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5) (a) An investment by a trustee authorized by lawful authority to engage in trust business, as defined in s. 658.12 ~~s. 658.12(20)~~, in investment instruments, as defined in s. 660.25(6), that are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, is not presumed to be affected by a conflict between personal and fiduciary interests provided the investment otherwise complies with chapters 518 and 660 and the trustee complies with the requirements of this subsection.

Section 19. For the purpose of incorporating the amendment made by this act to section 658.20, Florida Statutes, in references thereto, subsection (1) of section 658.165, Florida Statutes, is reenacted to read:

658.165 Banker's banks; formation; applicability of financial institutions codes; exceptions.—

(1) If authorized by the office, a corporation may be formed under the laws of this state for the purpose of becoming a banker's bank. An application for authority to organize a banker's bank is subject to ss. 658.19, 658.20, and 658.21, except that s. 658.20(1)(b) and (c) and the minimum stock ownership requirements for the organizing directors provided in s. 658.21(2) do not apply.

Section 20. This act shall take effect July 1, 2022.



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

And the title is amended as follows:

    Delete everything before the enacting clause  
and insert:

        A bill to be entitled

    An act relating to financial institutions; amending s.  
    120.80, F.S.; providing that the failure of foreign  
    nationals to participate through video conference in  
    certain hearings is grounds for denial of certain  
    applications; amending s. 475.01, F.S.; conforming a  
    cross-reference; amending s. 518.117, F.S.; conforming  
    a cross-reference; amending s. 655.045, F.S.; revising  
    the circumstances under which the Office of Financial  
    Regulation is required to conduct certain  
    examinations; authorizing the office to delay  
    examinations of state financial institutions under  
    certain circumstances; specifying that examination  
    requirements are deemed met under certain  
    circumstances; requiring copies of certain examination  
    reports to be furnished to state financial  
    institutions; requiring certain directors to review  
    such reports and acknowledge receipt of such reports  
    and reviews; amending s. 655.414, F.S.; revising the  
    entities that may acquire liabilities and assets, and  
    the liabilities and assets that may be acquired,  
    according to certain procedures, conditions, and  
    limitations; specifying the basis for calculating  
    percentages of assets or liabilities; specifying the  
    basis for calculating percentages of assets or



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liabilities; revising the quantity of assets a mutual financial institution may not sell to a stock financial institution, subject to certain conditions; amending s. 655.50, F.S.; revising the definition of the term "financial institution"; amending s. 657.021, F.S.; requiring credit unions to submit specified information to the office within a specified timeframe after certain meetings; amending s. 657.028, F.S.; deleting a provision relating to filing specified credit union information with the office; amending s. 658.12, F.S.; defining the term "target market"; amending s. 658.20, F.S.; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for a target market and the ability of the primary service area or target market to support proposed and existing bank or trust facilities; amending s. 658.21, F.S.; revising financial institution application approval requirements to include consideration of target market conditions; authorizing the office to waive a requirement that certain proposed financial institution presidents or chief executive officers have certain experience within a specified timeframe under certain circumstances; amending s. 658.28, F.S.; requiring a person or group to notify the office within a specified timeframe upon acquiring a controlling interest in a state bank or state trust company; amending s. 658.2953, F.S.; defining the term "de novo branch"; amending s. 662.1225, F.S.; revising



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the type of institution with which certain family trust companies are required to maintain a deposit account; amending s. 662.128, F.S.; revising the timeframe for filing renewal applications for certain family trust companies; amending s. 663.07, F.S.; revising the banks with which international bank agencies and international branches are required to maintain certain deposits or investment securities; amending s. 663.532, F.S.; revising references to lists of jurisdictions used for qualifying qualified limited service affiliates; requiring qualified limited service affiliates to suspend certain permissible activities under certain circumstances; specifying that such suspensions remain in effect until certain conditions are met; amending s. 736.0802, F.S.; conforming a cross-reference; reenacting s. 658.165(1), F.S., relating to banker's banks, for the purpose of incorporating amendments made by the act in references thereto; providing an effective date.

By Senator Gruters

23-00513C-22

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1 A bill to be entitled  
 2 An act relating to financial institutions; amending s.  
 3 120.80, F.S.; providing that the failure of foreign  
 4 nationals to appear through video conference at  
 5 certain hearings is grounds for denial of certain  
 6 applications; amending s. 475.01, F.S.; conforming a  
 7 cross-reference; creating s. 501.2076, F.S.; providing  
 8 that the imposition of fees or charges upon consumers  
 9 for online audit verifications of financial  
 10 institution accounts is a violation of the Florida  
 11 Deceptive and Unfair Trade Practices Act; amending s.  
 12 518.117, F.S.; conforming a cross-reference; amending  
 13 s. 655.045, F.S.; revising the circumstances pursuant  
 14 to which the Office of Financial Regulation is  
 15 required to conduct certain examinations; authorizing  
 16 the office to delay examinations of state financial  
 17 institutions under certain circumstances; specifying  
 18 that examination requirements are deemed met under  
 19 certain circumstances; requiring copies of certain  
 20 examination reports to be furnished to state financial  
 21 institutions; requiring certain directors to review  
 22 and acknowledge receipt of such reports; amending s.  
 23 655.414, F.S.; revising the entities that may assume  
 24 liabilities and assets, and the liabilities and assets  
 25 that may be assumed, according to certain procedures,  
 26 conditions, and limitations; specifying the basis for  
 27 calculating percentages of assets or liabilities;  
 28 revising the assets a mutual financial institution may  
 29 sell, subject to certain conditions; amending s.

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

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30 655.50, F.S.; revising the definition of the term  
 31 "financial institution"; amending s. 657.021, F.S.;  
 32 requiring credit unions to submit specified  
 33 information to the office after certain meetings;  
 34 repealing s. 657.028(6), F.S., relating to credit  
 35 union board member, committee member, and officer  
 36 election and appointment record reporting  
 37 requirements; amending s. 658.12, F.S.; defining the  
 38 term "target market"; amending s. 658.20, F.S.;  
 39 requiring the office, upon receiving applications for  
 40 authority to organize a bank or trust company, to  
 41 investigate the need for new bank facilities in a  
 42 primary service area or for a target market and the  
 43 ability of such service area or target market to  
 44 support new and existing bank facilities; amending s.  
 45 658.21, F.S.; revising financial institution  
 46 application approval requirements to include  
 47 consideration of target market conditions; deleting a  
 48 requirement that certain proposed financial  
 49 institution presidents or chief executive officers  
 50 have certain experience within a specified timeframe;  
 51 amending s. 658.28, F.S.; requiring a person or group  
 52 to notify the office within a specified timeframe upon  
 53 acquiring a controlling interest in a bank or trust  
 54 company in this state; amending s. 658.2953, F.S.;  
 55 defining the term "de novo branch"; amending s.  
 56 662.1225, F.S.; revising the type of institution with  
 57 which certain family trust companies are required to  
 58 maintain a deposit account; amending s. 662.128, F.S.;

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59 revising the timeframe for filing renewal applications  
 60 for certain family trust companies; amending s.  
 61 663.07, F.S.; revising the banks with which  
 62 international bank agencies or branches shall maintain  
 63 certain deposits; amending s. 663.532, F.S.; revising  
 64 references to lists of jurisdictions used for  
 65 qualifying qualified limited service affiliates;  
 66 requiring limited service affiliates to suspend  
 67 certain permissible activities under certain  
 68 circumstances; specifying that such suspensions remain  
 69 in effect until certain conditions are met; amending  
 70 s. 736.0802, F.S.; conforming a cross-reference;  
 71 reenacting s. 658.165(1), F.S., relating to banker's  
 72 banks, for the purpose of incorporating amendments  
 73 made by the act; providing an effective date.

74  
 75 Be It Enacted by the Legislature of the State of Florida:

76  
 77 Section 1. Paragraph (a) of subsection (3) of section  
 78 120.80, Florida Statutes, is amended to read:

79 120.80 Exceptions and special requirements; agencies.—

80 (3) OFFICE OF FINANCIAL REGULATION.—

81 (a) Notwithstanding s. 120.60(1), in proceedings for the  
 82 issuance, denial, renewal, or amendment of a license or approval  
 83 of a merger pursuant to title XXXVIII:

84 1.a. The Office of Financial Regulation of the Financial  
 85 Services Commission shall have published in the Florida  
 86 Administrative Register notice of the application within 21 days  
 87 after receipt.

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88 b. Within 21 days after publication of notice, any person  
 89 may request a hearing. Failure to request a hearing within 21  
 90 days after notice constitutes a waiver of any right to a  
 91 hearing. The Office of Financial Regulation or an applicant may  
 92 request a hearing at any time prior to the issuance of a final  
 93 order. Hearings shall be conducted pursuant to ss. 120.569 and  
 94 120.57, except that the Financial Services Commission shall by  
 95 rule provide for participation by the general public.

96 2. Should a hearing be requested as provided by sub-  
 97 subparagraph 1.b., the applicant or licensee shall publish at  
 98 its own cost a notice of the hearing in a newspaper of general  
 99 circulation in the area affected by the application. The  
 100 Financial Services Commission may by rule specify the format and  
 101 size of the notice.

102 3. Notwithstanding s. 120.60(1), and except as provided in  
 103 subparagraph 4., an application for license for a new bank, new  
 104 trust company, new credit union, new savings and loan  
 105 association, or new licensed family trust company must be  
 106 approved or denied within 180 days after receipt of the original  
 107 application or receipt of the timely requested additional  
 108 information or correction of errors or omissions. An application  
 109 for such a license or for acquisition of such control which is  
 110 not approved or denied within the 180-day period or within 30  
 111 days after conclusion of a public hearing on the application,  
 112 whichever is later, shall be deemed approved subject to the  
 113 satisfactory completion of conditions required by statute as a  
 114 prerequisite to license and approval of insurance of accounts  
 115 for a new bank, a new savings and loan association, a new credit  
 116 union, or a new licensed family trust company by the appropriate

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insurer.

4. In the case of an application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of an application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of such foreign national to appear personally at or to participate through video conference in the hearing shall be grounds for denial of the application. Notwithstanding s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

Section 2. Subsection (4) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12(24) ~~or 658.12(23)~~.

Section 3. Section 501.2076, Florida Statutes, is created

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to read:

501.2076 Violations involving consumer financial institution account fees.—The imposition of a fee or other charge by a third party agent or entity directly or indirectly upon a consumer for an online audit verification of an account maintained by a financial institution as defined in s. 655.005(1)(i) or of the associated balance of such account is a violation of this part.

Section 4. Section 518.117, Florida Statutes, is amended to read:

518.117 Permissible investments of fiduciary funds.—A fiduciary that is authorized by lawful authority to engage in trust business as defined in s. 658.12(21) ~~or 658.12(20)~~ may invest fiduciary funds in accordance with s. 660.417 so long as the investment otherwise complies with this chapter.

Section 5. Paragraph (a) of subsection (1) and subsection (4) of section 655.045, Florida Statutes, are amended, and paragraph (f) is added to subsection (1) of that section, to read:

655.045 Examinations, reports, and internal audits; penalty.—

(1) The office shall conduct an examination of the condition of each state financial institution at least every 18 months. The office may conduct more frequent examinations based upon the risk profile of the financial institution, prior examination results, or significant changes in the institution or its operations. The office may use continuous, phase, or other flexible scheduling examination methods for very large or complex state financial institutions and financial institutions

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owned or controlled by a multi-financial institution holding company. The office shall consider examination guidelines from federal regulatory agencies in order to facilitate, coordinate, and standardize examination processes.

(a) The office may accept an examination of a state financial institution made by an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. However, if the office accepts an examination report in accordance with this paragraph, the office shall conduct at least once during each 36-month period beginning July 1, 2023 ~~2014~~, a subsequent the office shall conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The office may furnish a copy of all examinations or reviews made of financial institutions or their affiliates to the state or federal agencies participating in the examination, investigation, or review, or as otherwise authorized under s. 655.057.

(f) In coordinating an examination required under this section, if a federal agency suspends or cancels a previously scheduled examination of a state financial institution, the office has an additional 90 days to meet the examination requirement of this section. In such case, the requirement is deemed met by the federal agency conducting the examination or upon the office conducting the examination instead.

(4) A copy of the report of each examination must be furnished to the state financial institution ~~entity~~ examined and

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presented to the board of directors at its next regular or special meeting. Each director shall review the report and acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the office.

Section 6. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.— With prior approval of the office, and upon such conditions as the commission prescribes by rule, a financial institution ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~ of the assets of, liabilities of, or a combination of assets and ~~or assume all or any part of the liabilities of~~, any other financial institution in accordance with the procedures and subject to the following conditions and limitations:

(1) CALCULATION OF ASSET OR LIABILITY PERCENTAGES.— Percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

(2) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on terms that are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.



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(c) A provision for liquidation, if applicable, of the transferring financial institution upon execution of the plan, or a provision setting forth the business plan for the continued operation of each financial institution after the execution of the plan.

(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution.

(e) If a stock financial institution is the transferring financial institution and the proposed sale is not for cash, a clear and concise statement that dissenting stockholders of the institution are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the acquisition, assumption, or sale and such other information and provisions as necessary to execute the transaction or as required by the office.

(3) ~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have an adequate capital structure in relation to their activities and their deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

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If the office disapproves the plan, it shall state its objections and give the parties an opportunity to amend the plan to overcome such objections.

(4) ~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office approves the plan, it may be submitted to the members or stockholders of the transferring financial institution at an annual meeting or at a special meeting called to consider such action. Upon a majority vote of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote of the members present at the meeting, the plan is adopted.

(5) ~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution, the president or vice president and the cashier, manager, or corporate secretary of such institution shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions have complied with all applicable state and federal law and rules, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or stockholders or certification by the office, the board of directors of the transferring financial institution may abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any

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contracts relating thereto.

~~(6)(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution, all participants must also comply with requirements imposed by federal and other state law for the acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution is a federal or out-of-state state-chartered financial institution and the transferring state financial entity will be liquidated, approval of the office is not required.

~~(7)(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell 50 percent or more ~~all or substantially all~~ of its assets to a stock financial institution until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations also refer to credit unions but, in the case of a credit union, the provision concerning proxy statements does not apply.

Section 7. Paragraph (c) of subsection (3) of section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

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

(c) "Financial institution" has the same meaning as in s.

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655.005(1)(i), excluding an international representative office, an international administrative office, or a qualified limited service affiliate ~~means a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state.~~

Section 8. Present subsections (2) through (8) of section 657.021, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

657.021 Board of directors; executive committee responsibilities; oaths; reports to the office.—

(2) Within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union shall submit to the office the names and residence addresses of the elected or appointed person or persons on a form adopted by the commission and provided by the office.

Section 9. Subsection (6) of section 657.028 is repealed.

Section 10. Present subsections (20) through (24) of section 658.12, Florida Statutes, are redesignated as subsections (21) through (25), respectively, and a new subsection (20) is added to that section, to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(20) "Target market" means the group of clients or potential clients from whom:

(a) A bank or proposed bank expects to draw deposits and to

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whom the bank or proposed bank focuses or intends to focus its marketing efforts; or

(b) A trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom the trust company, the trust department of a bank or association, the proposed trust company, or the proposed trust department of a bank or association focuses or intends to focus its marketing efforts.

Section 11. Paragraphs (b) and (c) of subsection (1) of section 658.20, Florida Statutes, are amended to read:

658.20 Investigation by office.—

(1) Upon the filing of an application, the office shall make an investigation of:

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located or for the target market that the bank or trust company intends to engage with in business.

(c) The ability of the primary service area or target market to support the proposed bank or trust company and all other existing bank or trust facilities that serve the same primary service area or target market in the primary service area.

Section 12. Subsections (1) and (4) of section 658.21, Florida Statutes, are amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(1) Local and target market conditions indicate reasonable

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promise of successful operation for the proposed state bank or trust company. In determining whether an applicant meets the requirements of this subsection, the office shall consider all materially relevant factors, including:

(a) The purpose, objectives, and business philosophy of the proposed state bank or trust company.

(b) The projected financial performance of the proposed bank or trust company.

(c) The feasibility of the proposed bank or trust company, as stated in the business plan, particularly with respect to asset and liability growth and management.

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law. At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application, the office may

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 407 modify the requirement and allow the applicant to have only one  
 408 director who has direct financial institution experience within  
 409 the last 5 years. The proposed president or chief executive  
 410 officer must have had at least 1 year of direct experience as an  
 411 executive officer, director, or regulator of a financial  
 412 institution ~~within the last 5 years.~~

413 Section 13. Present subsections (2), (3), and (4) of  
 414 section 658.28, Florida Statutes, are redesignated as  
 415 subsections (3), (4), and (5), respectively, and a new  
 416 subsection (2) is added to that section, to read:

417 658.28 Acquisition of control of a bank or trust company.—

418 (2) If a person or a group of persons, directly or  
 419 indirectly, acquires a controlling interest in a state bank or  
 420 state trust company, as contemplated by this section, through  
 421 probate or trust, the person or group of persons shall notify  
 422 the office within 90 days after acquiring such an interest. Such  
 423 an interest does not give rise to a presumption of control until  
 424 the person or group of persons votes the shares or the office  
 425 has issued a certificate of approval in response to an  
 426 application pursuant to subsection (1).

427 Section 14. Present paragraphs (a), (b), and (c) of  
 428 subsection (11) of section 658.2953, Florida Statutes, are  
 429 redesignated as paragraphs (b), (c), and (d), respectively, and  
 430 a new paragraph (a) is added to that subsection, to read:

431 658.2953 Interstate branching.—

432 (11) DE NOVO INTERSTATE BRANCHING ~~BY STATE BANKS.~~—

433 (a) As used in this subsection, the term “de novo branch”  
 434 means a branch of a bank which is originally established by the  
 435 bank as a branch and does not become a branch of such bank as a

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 436 result of:

437 1. The bank’s acquisition of another bank or of a branch of  
 438 another bank; or

439 2. The conversion, merger, or consolidation of any bank or  
 440 branch.

441 Section 15. Paragraph (d) of subsection (1) of section  
 442 662.1225, Florida Statutes, is amended to read:

443 662.1225 Requirements for a family trust company, licensed  
 444 family trust company, or foreign licensed family trust company.—

445 (1) A family trust company or a licensed family trust  
 446 company shall maintain:

447 (d) A deposit account with:

448 1. A bank located in the United States and insured by the  
 449 Federal Deposit Insurance Corporation; or

450 2. A credit union located in the United States and insured  
 451 by the National Credit Union Administration ~~with a state-~~  
 452 ~~chartered or national financial institution that has a principal~~  
 453 ~~or branch office in this state.~~

454 Section 16. Subsection (1) of section 662.128, Florida  
 455 Statutes, is amended to read:

456 662.128 Annual renewal.—

457 (1) ~~Within 45 days after the end of each calendar year,~~ A  
 458 family trust company, licensed family trust company, or foreign  
 459 licensed family trust company shall file an ~~its~~ annual renewal  
 460 application with the office on an annual basis no later than 45  
 461 days after the anniversary of the filing of either the initial  
 462 application or the prior year’s renewal application.

463 Section 17. Subsection (1) of section 663.07, Florida  
 464 Statutes, is amended to read:



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465 663.07 Asset maintenance or capital equivalency.—  
 466 (1) Each international bank agency and international branch  
 467 shall:  
 468 (a) Maintain with one or more banks insured by the Federal  
 469 Deposit Insurance Corporation and located within the United  
 470 States in this state, in such amounts as the office specifies,  
 471 evidence of dollar deposits or investment securities of the type  
 472 that may be held by a state bank for its own account pursuant to  
 473 s. 658.67. The aggregate amount of dollar deposits and  
 474 investment securities for an international bank agency or  
 475 international branch shall, at a minimum, equal the greater of:  
 476 1. Four million dollars; or  
 477 2. Seven percent of the total liabilities of the  
 478 international bank agency or international branch excluding  
 479 accrued expenses and amounts due and other liabilities to  
 480 affiliated branches, offices, agencies, or entities; or  
 481 (b) Maintain other appropriate reserves, taking into  
 482 consideration the nature of the business being conducted by the  
 483 international bank agency or international branch.  
 484  
 485 The commission shall prescribe, by rule, the deposit,  
 486 safekeeping, pledge, withdrawal, recordkeeping, and other  
 487 arrangements for funds and securities maintained under this  
 488 subsection. The deposits and securities used to satisfy the  
 489 capital equivalency requirements of this subsection shall be  
 490 held, to the extent feasible, in one or more state or national  
 491 banks located in this state or in a federal reserve bank.  
 492 Section 18. Present subsections (4), (5), and (6) of  
 493 section 663.532, Florida Statutes, are redesignated as

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494 subsections (5), (6), and (7), respectively, a new subsection  
 495 (4) is added to that section, and paragraphs (i) and (j) of  
 496 subsection (1) of that section are amended, to read:  
 497 663.532 Qualification.—  
 498 (1) To qualify as a qualified limited service affiliate  
 499 under this part, a proposed qualified limited service affiliate  
 500 must file a written notice with the office, in the manner and on  
 501 a form prescribed by the commission. Such written notice must  
 502 include:  
 503 (i) A declaration under penalty of perjury signed by the  
 504 executive officer, manager, or managing member of the proposed  
 505 qualified limited service affiliate that, to the best of his or  
 506 her knowledge:  
 507 1. No employee, representative, or agent provides, or will  
 508 provide, banking services; promotes or sells, or will promote or  
 509 sell, investments; or accepts, or will accept, custody of  
 510 assets.  
 511 2. No employee, representative, or agent acts, or will act,  
 512 as a fiduciary in this state, which includes, but is not limited  
 513 to, accepting the fiduciary appointment, executing the fiduciary  
 514 documents that create the fiduciary relationship, or making  
 515 discretionary decisions regarding the investment or distribution  
 516 of fiduciary accounts.  
 517 3. The jurisdiction of the international trust entity or  
 518 its offices, subsidiaries, or any affiliates that are directly  
 519 involved in or facilitate the financial services functions,  
 520 banking, or fiduciary activities of the international trust  
 521 entity is not listed on the Financial Action Task Force's list  
 522 of High-Risk Jurisdictions subject to a Call for Action or list

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523 of Jurisdictions under Increased Monitoring ~~Force Public~~  
 524 ~~Statement or on its list of jurisdictions with deficiencies in~~  
 525 ~~anti money laundering or counterterrorism.~~

526 (j) For each international trust entity that the proposed  
 527 qualified limited service affiliate will provide services for in  
 528 this state, the following:

- 529 1. The name of the international trust entity;
- 530 2. A list of the current officers and directors of the  
 531 international trust entity;
- 532 3. Any country where the international trust entity is  
 533 organized or authorized to do business;
- 534 4. The name of the home-country regulator;
- 535 5. Proof that the international trust entity has been  
 536 authorized by charter, license, or similar authorization by its  
 537 home-country regulator to engage in trust business;
- 538 6. Proof that the international trust entity lawfully  
 539 exists and is in good standing under the laws of the  
 540 jurisdiction where it is chartered, licensed, or organized;
- 541 7. A statement that the international trust entity is not  
 542 in bankruptcy, conservatorship, receivership, liquidation, or in  
 543 a similar status under the laws of any country;
- 544 8. Proof that the international trust entity is not  
 545 operating under the direct control of the government or the  
 546 regulatory or supervisory authority of the jurisdiction of its  
 547 incorporation, through government intervention or any other  
 548 extraordinary actions, and confirmation that it has not been in  
 549 such a status or under such control at any time within the prior  
 550 3 years;
- 551 9. Proof and confirmation that the proposed qualified

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552 limited service affiliate is affiliated with the international  
 553 trust entities provided in the notice; and

554 10. Proof that the jurisdictions where the international  
 555 trust entity or its offices, subsidiaries, or any affiliates  
 556 that are directly involved in or that facilitate the financial  
 557 services functions, banking, or fiduciary activities of the  
 558 international trust entity are not listed on the Financial  
 559 Action Task Force's list of High-Risk Jurisdictions subject to a  
 560 Call for Action or list of Jurisdictions under Increased  
 561 Monitoring ~~Force Public Statement or on its list of~~  
 562 ~~jurisdictions with deficiencies in anti money laundering or~~  
 563 ~~counterterrorism.~~

564  
 565 The proposed qualified limited service affiliate may provide  
 566 additional information in the form of exhibits when attempting  
 567 to satisfy any of the qualification requirements. All  
 568 information that the proposed qualified limited service  
 569 affiliate desires to present to support the written notice must  
 570 be submitted with the notice.

571 (4) The qualified limited service affiliate shall suspend  
 572 the permissible activities provided in s. 663.531 relating to a  
 573 specific jurisdiction if the qualified limited service affiliate  
 574 becomes aware that the jurisdiction of an international trust  
 575 entity served by the qualified limited service affiliate is  
 576 included on the Financial Action Task Force's list of High-Risk  
 577 Jurisdictions subject to a Call for Action or list of  
 578 Jurisdictions under Increased Monitoring. Suspensions under this  
 579 subsection must remain in effect until the jurisdiction is  
 580 removed from the Financial Action Task Force's list of High Risk

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581 Jurisdictions subject to a Call for Action or list of  
582 Jurisdictions under Increased Monitoring.

583 Section 19. Paragraph (a) of subsection (5) of section  
584 736.0802, Florida Statutes, is amended to read:

585 736.0802 Duty of loyalty.—

586 (5) (a) An investment by a trustee authorized by lawful  
587 authority to engage in trust business, as defined in s.  
588 658.12(21) ~~s. 658.12(20)~~, in investment instruments, as defined  
589 in s. 660.25(6), that are owned or controlled by the trustee or  
590 its affiliate, or from which the trustee or its affiliate  
591 receives compensation for providing services in a capacity other  
592 than as trustee, is not presumed to be affected by a conflict  
593 between personal and fiduciary interests provided the investment  
594 otherwise complies with chapters 518 and 660 and the trustee  
595 complies with the requirements of this subsection.

596 Section 20. For the purpose of incorporating the amendment  
597 made by this act to section 658.20, Florida Statutes, in a  
598 references thereto, subsection (1) of section 658.165, Florida  
599 Statutes, is reenacted to read:

600 658.165 Banker's banks; formation; applicability of  
601 financial institutions codes; exceptions.—

602 (1) If authorized by the office, a corporation may be  
603 formed under the laws of this state for the purpose of becoming  
604 a banker's bank. An application for authority to organize a  
605 banker's bank is subject to ss. 658.19, 658.20, and 658.21,  
606 except that s. 658.20(1)(b) and (c) and the minimum stock  
607 ownership requirements for the organizing directors provided in  
608 s. 658.21(2) do not apply.

609 Section 21. This act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kathleen Passidomo, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 3, 2022

---

I respectfully request that **Senate Bill #1680**, relating to Financial Institutions, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Problem:

SB 1680 makes a number of revisions to Florida law relating to financial institutions.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: John B. Phelps, Staff Director  
Tom Yeatman, Deputy Staff Director  
Cynthia Futch, Committee Administrative Assistant

2/10/22

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

SB 1680

Bill Number or Topic

**Rules**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Commissioner Russ Weigel Phone \_\_\_\_\_

Address 101 E Gaines St Email Russell.Weigel@flofr.gov

Street

Tallahassee FL 32399

City

State

Zip

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

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

**Office of Financial Regulation**

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

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

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

S-001 (08/10/2021)

# CourtSmart Tag Report

**Room:** KB 412

**Case No.:** -

**Type:**

**Caption:** Senate Rules Committee

**Judge:**

**Started:** 2/10/2022 11:01:46 AM

**Ends:** 2/10/2022 12:31:05 PM

**Length:** 01:29:20

11:01:45 AM Meeting called to order by the Chair  
11:01:48 AM Roll call by CAA  
11:02:19 AM Quorum announced  
11:02:33 AM Chair with opening comments  
11:02:59 AM SB 944 is Tp'd  
11:04:17 AM Tab 15 SB 1240  
11:04:25 AM Senator Harrell explains the bill  
11:05:43 AM Senator Harrell waives close  
11:05:50 AM Roll call on SB 1240  
11:05:54 AM SB 1240 is reported favorably  
11:06:19 AM Tab 13 CS/CS/SB 1062  
11:06:29 AM Senator Bradley explains the bill  
11:07:18 AM Appearance Form  
11:07:21 AM Lisa Hurley, Family Law Section -Florida Bar, waives in support  
11:07:27 AM Aimee Diaz Lyon, Business Law Section, Florida Bar waives in support  
11:07:32 AM Senator Bradley waives close  
11:07:37 AM Roll call on CS/CS/SB 1062  
11:07:42 AM CS/CS/SB 1062 is reported favorably  
11:08:08 AM Tab 1 SB 170  
11:08:19 AM Senator Polsky explains the bill  
11:09:31 AM Senator Boyd with question  
11:09:38 AM Senator Polsky responds  
11:10:04 AM Senator Baxley in debate  
11:10:25 AM Senator Polsky waives close  
11:10:30 AM Roll call on SB 170  
11:10:35 AM SB 170 is reported favorably  
11:11:01 AM Tab 4 SB 706  
11:11:08 AM Senator Perry explains the bill  
11:11:38 AM Amendment Barcode 250496  
11:11:54 AM Senator Perry explains the amendment  
11:12:04 AM Substitute Amendment Barcode 863198  
11:12:08 AM Senator Perry explains the amendment  
11:12:31 AM Senator Perry waives close  
11:12:38 AM Substitute Amendment is adopted  
11:12:51 AM Appearance Forms  
11:13:01 AM Edward Briggs, Homes by West Bay waives in support  
11:13:13 AM Keri Hebrank, Florida Home Builders Association waives in support  
11:13:22 AM Senator Perry waives close  
11:13:32 AM Roll call on CS/CS/CS/SB 706  
11:13:39 AM CS/CS/CS/SB 706 is reported favorably  
11:14:16 AM Tab 14 SB 1140  
11:14:24 AM Senator Perry explains the bill  
11:14:46 AM Appearance Forms  
11:14:47 AM Back to questions  
11:14:51 AM Senator Powell with question  
11:15:06 AM Senator Perry responds  
11:15:34 AM Senator Powell with question  
11:15:37 AM Senator Perry responds  
11:15:55 AM Senator Powell with question  
11:15:58 AM Senator Perry responds  
11:16:27 AM Appearance Forms  
11:16:32 AM Eric Prutsman, Alarm Association of Florida waives in support

11:16:38 AM Phillip Suderman, Americans for Prosperity waives in support  
11:16:49 AM Senator Perry waives close  
11:17:00 AM Roll call on CS/CS/SB 1140  
11:17:08 AM CS/CS/SB 1140 is reported favorably  
11:17:39 AM Tab 10 CS/SB 1002  
11:17:48 AM Senator Burgess explains the bill  
11:18:43 AM Chair with question  
11:18:50 AM Senator Burgess responds  
11:19:10 AM Appearance Form  
11:19:19 AM Matt Joyner, FL Citrus Mutual waives in support  
11:19:23 AM Senator Burgess waives close  
11:19:29 AM Roll call on CS/SB 1002  
11:19:35 AM CS/SB 1002 is reported favorably  
11:20:01 AM Tab 11 CS/SB 1012  
11:20:09 AM Senator Burgess explains the bill  
11:21:18 AM Amendment Barcode 749586  
11:21:23 AM Senator Burgess explains the amendment  
11:21:48 AM Senator Brandes with question  
11:22:36 AM Senator Burgess responds  
11:23:26 AM Senator Brandes with question  
11:23:28 AM Senator Burgess responds  
11:24:27 AM Senator Brandes with question  
11:24:30 AM Senator Burgess responds  
11:25:44 AM Senator Gibson with question  
11:25:56 AM Senator Burgess responds  
11:27:07 AM Senator Farmer with question  
11:27:13 AM Senator Burgess responds  
11:28:24 AM Senator Farmer with question  
11:28:29 AM Senator Burgess responds  
11:30:26 AM Senator Book with question  
11:30:45 AM Senator Burgess responds  
11:30:51 AM Senator Gibson with question  
11:31:11 AM Senator Burgess responds  
11:31:28 AM Jack Campbell, State Attorney/Florida Prosecuting Attorney Association for information  
11:35:35 AM Senator Brandes with question  
11:35:42 AM Mr. Campbell responds  
11:37:34 AM Senator Brandes with question  
11:37:57 AM Mr. Campbell responds  
11:38:46 AM Senator Farmer with question  
11:38:50 AM Mr. Campbell responds  
11:39:10 AM Senator Farmer with question  
11:39:12 AM Mr. Campbell responds  
11:39:48 AM Senator Farmer with question  
11:39:51 AM Mr. Campbell responds  
11:40:30 AM Senator Farmer with question  
11:40:33 AM Mr. Campbell  
11:40:48 AM Senator Gibson with question  
11:40:53 AM Mr. Campbell responds  
11:41:55 AM Senator Gibson with follow-up  
11:41:59 AM Mr. Campbell responds  
11:43:25 AM Bill temporarily postponed  
11:43:48 AM Tab 5 CS/SB 772  
11:43:57 AM Senator Diaz explains the bill  
11:44:17 AM Amendment Barcode 413494  
11:44:26 AM Senator Diaz explains the amendment  
11:44:51 AM AA Barcode 144340  
11:44:54 AM Senator Diaz explains amendment to the amendment  
11:45:13 AM Senator Diaz waives close  
11:45:19 AM AA is adopted  
11:45:21 AM Back on Amendment Barcode 413494  
11:45:38 AM Senator Diaz waives close on amendment as amended  
11:45:46 AM Amendment is adopted

11:45:55 AM Senator Diaz waives close on bill  
11:46:00 AM Roll call on CS/CS/SB 772  
11:46:08 AM CS/CS/SB 772 is reported favorably  
11:46:41 AM Tab 2 CS/SB 510  
11:46:51 AM Senator Brodeur explains the bill  
11:47:17 AM Substitute Amendment 386248  
11:47:27 AM Senator Brodeur explains the SA  
11:48:23 AM Appearance Form  
11:48:47 AM Kerrie Stillman, Florida Commission on Ethics speaks  
11:49:43 AM Senator Bracy with question  
11:50:14 AM Senator Brodeur responds  
11:51:15 AM Senator Powell with question  
11:51:23 AM Senator Brodeur responds  
11:52:06 AM Senator Powell with question  
11:52:10 AM Senator Brodeur responds  
11:53:09 AM Senator Powell with question  
11:53:11 AM Senator Brodeur responds  
11:53:55 AM Senator Gibson with question  
11:54:01 AM Senator Brodeur responds  
11:55:01 AM Senator Gibson with follow-up  
11:55:06 AM Senator Brodeur responds  
11:55:56 AM Senator Gibson with question  
11:56:02 AM Senator Brodeur responds  
11:56:19 AM Senator Brodeur closes on SA  
11:56:30 AM SA is adopted  
11:56:41 AM Senator Bracy with question  
11:57:16 AM Senator Brodeur responds  
11:57:29 AM Senator Bracy with question  
11:57:32 AM Senator Brodeur responds  
11:57:53 AM Appearance Forms  
11:57:55 AM Phillip Suderman waives in support  
11:58:02 AM Senator Powell in debate  
11:58:39 AM Senator Brodeur closes  
11:59:39 AM Roll call on CS/CS/SB 510  
12:00:15 PM CS/CS/SB 510 is reported favorably  
12:00:45 PM Tab 3 CS/CS/SB 644  
12:00:50 PM Senator Brodeur explains the bill  
12:01:04 PM Amendment Barcode 719540  
12:01:10 PM Senator Brodeur explains the amendment  
12:01:46 PM Amendment is adopted  
12:01:58 PM Senator Brodeur waives close  
12:02:07 PM Roll call on CS/CS/CS/SB 644  
12:02:11 PM CS/CS/CS/SB 644 is reported favorably  
12:02:46 PM Tab 6 CS/SB 882  
12:02:51 PM Senator Brodeur explains the bill  
12:03:14 PM Substitute Amendment Barcode 187630  
12:03:34 PM Senator Brodeur explains the SA  
12:03:51 PM Senator Brandes with question  
12:04:02 PM Senator Brodeur responds  
12:04:46 PM Senator Brodeur waives close  
12:04:51 PM SA adopted  
12:05:06 PM Senator Farmer in debate  
12:05:26 PM Senator Brodeur with comments  
12:05:30 PM Senator Brodeur waives close  
12:05:32 PM Roll call on CS/CS/SB 882  
12:05:35 PM CS/CS/SB 882 is reported favorably  
12:06:04 PM Tab 7 CS/SB 896  
12:06:35 PM Senator Burgess explains the bill  
12:07:07 PM Appearance Form  
12:07:10 PM Edward Briggs, Charter School Leaders of Florida, Inc., waives in support  
12:07:19 PM Senator Gibson in debate  
12:07:26 PM Senator Burgess responds



12:07:46 PM Senator Burgess waives close  
12:07:50 PM Roll call on CS/SB 896  
12:07:53 PM CS/SB 896 is reported favorably  
12:08:21 PM Tab 12 SB 1058  
12:08:40 PM Senator Hutson explains the bill  
12:09:00 PM Senator Farmer with question  
12:09:25 PM Senator Hutson responds  
12:09:42 PM Senator Farmer with question  
12:09:44 PM Senator Hutson responds  
12:10:20 PM Senator Farmer with question  
12:10:24 PM Senator Hutson responds  
12:11:00 PM Appearance Forms  
12:11:04 PM Tasha Carter, Office of the Insurance Consumer Advocate waives in support  
12:11:09 PM Grant Phillips, Office of Insurance Regulation waives in support  
12:11:13 PM Austin Stowers, CFO & State Fire Marshall, Jimmy Patronis, waives in support  
12:11:23 PM Senator Hutson waives close  
12:11:27 PM Roll call on CS/SB 1038  
12:11:35 PM CS/SB 1058 is reported favorably  
12:11:58 PM Tab 17 CS/CS/SB 1536  
12:12:05 PM Senator Boyd explains the bill  
12:12:42 PM Appearance Forms  
12:12:44 PM Commissioner Russ Weigel, Office of Financial Regulation waives in support  
12:12:51 PM Senator Boyd waives close  
12:12:55 PM Roll call on CS/CS/SB 1536  
12:12:59 PM CS/CS/SB 1536 is reported favorably  
12:13:24 PM Tab 9 CS/SB 1000  
12:13:35 PM Senator Albritton explains the bill  
12:14:04 PM Amendment Barcode 628210  
12:15:04 PM Senator Albritton explains the amendment  
12:16:11 PM Senator Farmer with question  
12:16:21 PM Senator Albritton responds  
12:16:50 PM Appearance Forms  
12:16:52 PM David Cullen, Sierra Club Florida speaks for the amendment  
12:17:01 PM Beth Alvi, Audubon Florida, waives in support of the amendment  
12:17:05 PM Senator Albritton waives close on amendment  
12:17:09 PM Amendment is adopted  
12:17:14 PM Appearance Forms  
12:17:22 PM Garrett Wallace, The Nature Conservancy waives in support  
12:17:28 PM David Cullen speaks against the bill  
12:18:37 PM Haley Busch, 1000 Friends of Florida, speaks against  
12:19:54 PM Lindsay Cross, Florida Conservation Voters speaks against  
12:21:03 PM Matt Joyner, waives in support  
12:21:23 PM Jim Spratt, Florida Nursery Growers & Landscape Association waives in support  
12:21:28 PM Adam Basford, Associated Industries of FL waives in support  
12:21:33 PM John Wall Boatright, Florida Farm Bureau waives in support  
12:21:41 PM Senator Farmer in debate  
12:22:45 PM Senator Albritton waives close  
12:23:45 PM Roll call on CS/CS/SB 1000  
12:23:47 PM CS/CS/SB 1000 is reported favorably  
12:24:19 PM Tab 16 CS/SB 1260  
12:24:22 PM Senator Gruters explains the bill  
12:24:41 PM Senator Powell with question  
12:24:46 PM Senator Gruters responds  
12:25:22 PM Appearance Forms  
12:25:27 PM Michael Nacheff, Lee Health, waives in support  
12:25:34 PM Senator Farmer in debate  
12:26:48 PM Senator Gruters waives close  
12:27:47 PM Roll call on CS/SB 1260  
12:27:51 PM CS/SB 1260 is reported favorably  
12:28:17 PM Tab 18 SB 1680  
12:28:27 PM Senator Gruters explains the Strike-all Amendment  
12:28:36 PM Senator Gruters waives close

12:28:58 PM Amendment adopted  
12:29:02 PM Appearance Forms  
12:29:04 PM Commissioner Russ Weigel waives in support  
12:29:08 PM Senator Gruters waives close  
12:29:12 PM Roll call on CS/SB 1680  
12:29:17 PM CS/SB 1680 is reported favorably  
12:29:49 PM SB 1012 is Tp'd  
12:29:55 PM Senator Book with question  
12:30:08 PM Senator Book with vote motion on Tab 2  
12:30:10 PM Senator Farmer with vote motion on Tabs 13,15  
12:30:16 PM Senator Bean with vote motion on Tabs 2,3,6  
12:30:21 PM Senator Powell with vote motion on Tab 12  
12:30:23 PM Senator Stargel with vote motion on Tab 15  
12:30:25 PM Senator Garcia with vote motion on Tabs 13,15  
12:30:28 PM Senator Mayfield with vote motion on Tab 5  
12:30:30 PM Senator Albritton with vote motion on Tabs 4,10,14  
12:30:34 PM Chair Passidomo with vote motion on Tab 3  
12:30:36 PM Motions adopted  
12:30:51 PM Senator Albritton moves to adjourn  
12:30:52 PM Meeting adjourned