Tab 1	**CS/SB 1012** by **JU, Burgess (CO-INTRODUCERS) Book, Perry**; (Identical to CS/H 00697) Victims of Crimes

~~749586~~	A	S		WD	RC, Burgess	Delete L.135:	02/15 04:08 PM

Tab 2	**CS/CS/SB 190** by **CJ, JU, Brodeur**; (Similar to CS/H 00095) Controlled Substances

Tab 3	**CS/SB 224** by **EN, Gruters (CO-INTRODUCERS) Bradley, Farmer, Berman, Stewart, Rouson, Boyd, Hooper**; (Similar to H 00105) Regulation of Smoking in Public Places

727890	A	S	L	RCS	RC, Hutson	Delete L.23 - 41:	02/15 04:18 PM
713858	AA	S	L	RCS	RC, Hutson	Delete L.20 - 25:	02/15 04:18 PM

Tab 4	**SB 442** by **Rodriguez**; (Identical to H 00571) Powers of Land Authorities

Tab 5	**CS/CS/SB 514** by **CA, GO, Burgess (CO-INTRODUCERS) Perry**; (Identical to CS/H 00317) Substitution of Work Experience for Postsecondary Educational Requirements

Tab 6	**CS/SB 590** by **GO, Rodriguez**; (Similar to H 01523) Public Records and Meetings/Professional Counselors Licensure Compact

755852	A	S		RCS	RC, Rodriguez	Delete L.83 - 95:	02/15 04:27 PM

Tab 7	**CS/SB 654** by **JU, Cruz (CO-INTRODUCERS) Gibson, Jones**; (Similar to H 00905) Protective Injunctions

~~449906~~	A	S	L	WD	RC, Cruz	Delete L.53 - 393:	02/15 04:31 PM
913776	A	S	L	RCS	RC, Cruz	Delete L.53 - 393:	02/15 04:31 PM

Tab 8	**CS/SB 692** by **CJ, Stewart (CO-INTRODUCERS) Harrell**; (Compare to CS/H 00341) Sexual Offenses

259910	A	S		RCS	RC, Stewart	Delete L.216 - 228.	02/15 04:39 PM

Tab 9	**CS/SB 722** by **CJ, Perry**; (Similar to CS/H 01515) Education for Student Inmates

Tab 10	**SB 728** by **Harrell**; (Similar to CS/H 01005) Advanced Air Mobility

618000	A	S		RCS	RC, Harrell	Delete L.58 - 86:	02/15 04:44 PM

Tab 11	**CS/SB 796** by **CJ, Bradley**; (Identical to CS/H 00287) Tampering with or Fabricating Physical Evidence

Tab 12	**CS/CS/SB 876** by **CJ, TR, Pizzo (CO-INTRODUCERS) Rodrigues**; (Similar to CS/CS/H 00399) Stunt Driving on Highways

546672	A	S		RCS	RC, Pizzo	Delete L.206 - 257:	02/15 04:53 PM

Tab 13	**SB 892** by **Burgess**; (Similar to CS/H 00225) Charter School Charters

Tab 14	**SB 940** by **Baxley**; (Compare to CS/H 00375) Professional Structural Engineers

Tab 15	**SB 968** by **Polsky**; (Identical to H 00649) Individual Retirement Accounts

Tab 16	**CS/SB 1046** by **GO, Hooper**; (Similar to CS/CS/H 00773) Public Records/Law Enforcement Geolocation Information

Tab 17	**SB 1054** by **Hutson (CO-INTRODUCERS) Pizzo, Berman, Baxley**; (Similar to H 01115) Financial Literacy Instruction in Public Schools

~~263118~~ A S L WD RC, Hutson Delete L.48 - 98: 02/15 05:31 PM

Tab 18	**CS/SR 1064** by **MS, Garcia**; (Compare to H 01383) United States Department of State's List of Foreign Terrorist Organizations

Tab 19	**CS/SB 1066** by **BI, Burgess (CO-INTRODUCERS) Hooper**; (Similar to H 00689) Workers' Compensation Benefits for First Responders

Tab 20	**CS/SB 1182** by **BI, Broxson**; (Similar to CS/H 00381) Breach of Bond Costs

128856 D S RCS RC, Broxson Delete everything after 02/15 05:43 PM

Tab 21	**SB 1190** by **Boyd**; (Similar to CS/H 00785) Two-way Radio Communication Enhancement Systems

148564 A S RCS RC, Boyd Delete L.23: 02/15 05:48 PM

Tab 22	**SB 1204** by **Broxson**; (Identical to H 00873) Public Records/Information or Records/Executions

Tab 23	**CS/CS/SB 1222** by **JU, HP, Bean (CO-INTRODUCERS) Gibson**; (Similar to CS/H 00937) Acute and Post-acute Hospital Care at Home

Tab 24	**SB 1236** by **Jones**; (Similar to CS/H 01561) County and Municipal Detention Facilities

327694 A S RCS RC, Jones Delete L.61 - 252: 02/15 05:58 PM

Tab 25	**CS/SB 1246** by **CM, Gruters**; (Identical to CS/H 00925) Benchmark Replacements for the London Interbank Offered Rate

Tab 26	**SB 1258** by **Jones (CO-INTRODUCERS) Bracy**; (Identical to H 00855) Managed Care Plan Performance

Tab 27	**CS/SB 1326** by **CA, Rodriguez (CO-INTRODUCERS) Farmer, Jones, Berman**; (Similar to CS/H 00513) Comprehensive Review Study of the Central and Southern Florida Project

Tab 28	**CS/CS/SB 1332** by **CA, RI, Wright**; (Similar to CS/H 00481) Temporary Underground Power Panels

Tab 29	**CS/SB 1338** by **CA, Diaz**; (Similar to CS/H 01411) Floating Solar Facilities

Tab 30	**SB 1360** by **Wright**; (Identical to H 01195) Governor's Medal of Freedom

Tab 31	**CS/SB 1368** by **BI, Gruters**; (Similar to CS/H 01001) Trusts

Tab 32	**SB 1380** by **Rodriguez**; (Similar to CS/H 00219) Real Property Rights

280360 A S L RCS RC, Rodriguez Delete L.104: 02/15 06:19 PM

Tab 33	**CS/CS/SB 1432** by **CA, EN, Rodriguez**; (Similar to H 01065) Vessel Anchoring

Tab 34	**CS/SB 1502** by **BI, Powell**; (Similar to H 00625) Estates and Trusts

Tab 35	**CS/SB 1526** by **BI, Boyd**; (Similar to CS/H 01413) Public Records/Annuity Contract Payees

Tab 36	**SB 1552** by **Gruters**; Direct-support Organization for the Florida Prepaid College Board

Tab 37	**CS/CS/SB 1564** by **RI, CM, Hutson**; (Compare to CS/CS/H 01095) Telephone Solicitation

~~457860~~	A	S	L	WD	RC, Hutson	Delete L.47:	02/15 06:50 PM
~~522428~~	AA	S	L	WD	RC, Farmer	Delete L.5:	02/15 06:50 PM
149210	A	S	L	RCS	RC, Hutson	btw L.46 - 47:	02/15 06:50 PM

Tab 38	**CS/SB 1954** by **TR, Wright**; (Similar to H 01435) Code and Traffic Enforcement

~~902096~~	A	S	WD	RC, Wright	Delete L.95 - 99:	02/15 06:55 PM

Tab 39	**CS/CS/HB 7001** by **RUC, SAC, PIE, Koster**; Implementation of the Constitutional Prohibition Against Lobbying by a Public Officer

Tab 40	**HB 7003** by **PIE, Koster**; Implementation of the Constitutional Prohibition Against Lobbying by a Former Justice or Judge

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Passidomo, Chair
Senator Garcia, Vice Chair

MEETING DATE: Tuesday, February 15, 2022
TIME: 10:00 a.m.—3:30 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 SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 1012** Judiciary / Burgess (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. CJ 01/25/2022 Favorable JU 01/31/2022 Fav/CS RC 02/10/2022 Temporarily Postponed RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
2	**CS/CS/SB 190** Criminal Justice / Judiciary / Brodeur (Similar CS/H 95)	Controlled Substances; Revising the elements that constitute the capital offense of murder in the first degree; revising the elements that constitute the felony offense of murder in the third degree; prohibiting specified activities involving controlled substances within 1,000 feet of additional specified facilities; providing criminal penalties, etc. JU 11/30/2021 Not Considered JU 01/10/2022 Fav/CS CJ 02/08/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 10 Nays 6
3	**CS/SB 224** Environment and Natural Resources / Gruters (Similar H 105)	Regulation of Smoking in Public Places; Authorizing counties and municipalities to further restrict smoking within the boundaries of public beaches and public parks under certain circumstances, with exceptions, etc. CA 11/03/2021 Favorable EN 02/07/2022 Fav/CS RC 02/15/2022 Fav/CS	Fav/CS Yeas 14 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 442** Rodriguez (Identical H 571)	Powers of Land Authorities; Authorizing land authorities to assist the counties in which they are located with certain activities addressing flooding and sea-level rise, etc. EN 11/30/2021 Favorable CA 02/02/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
5	**CS/CS/SB 514** Community Affairs / Governmental Oversight and Accountability / Burgess (Identical CS/H 317)	Substitution of Work Experience for Postsecondary Educational Requirements; Authorizing the head of an employing agency, beginning on a specified date, to elect to substitute certain work experience for postsecondary educational requirements under certain circumstances; prohibiting the substitution of certain work experience for postsecondary educational requirements, etc. GO 02/02/2022 Fav/CS CA 02/08/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
6	**CS/SB 590** Governmental Oversight and Accountability / Rodriguez (Similar H 1523, Compare CS/H 1521, Linked CS/S 358)	Public Records and Meetings/Professional Counselors Licensure Compact; Providing an exemption from public records requirements for certain information held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling pursuant to the Professional Counselors Licensure Compact; providing an exemption from public meetings requirements for certain meetings or portions of certain meetings of the Counseling Compact Commission or committees of the commission; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc. HP 12/02/2021 Favorable GO 01/13/2022 Fav/CS RC 02/15/2022 Fav/CS	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 654** Judiciary / Cruz (Similar H 905)	Protective Injunctions; Specifying a timeframe in which the clerk of the court must transmit specified documents relating to an injunction for protection against domestic violence to the appropriate local sheriff or law enforcement agency; providing for the electronic transmission of certain documents rather than by facsimile; specifying a timeframe in which the clerk of the court must transmit specified documents relating to injunctions for protection against repeat violence, sexual violence, or dating violence and against stalking, respectively, to the appropriate local sheriff or law enforcement agency, etc. JU 01/31/2022 Fav/CS CF 02/08/2022 Favorable RC 02/15/2022 Fav/CS	Fav/CS Yeas 17 Nays 0
8	**CS/SB 692** Criminal Justice / Stewart (Similar S 878, Compare CS/H 341, CS/H 379, CS/S 444, CS/S 1244)	Sexual Offenses; Providing that substantial similarity is not required for the admissibility of certain evidence in a criminal case in which the defendant is charged with a sexual offense; revising the definitions of the terms “sexual battery” and “sexual bestiality”; revising the definition of the term “sexual misconduct”; providing a time limitation for the prosecution of specified sexual battery offenses; providing that a person who threatens to use actual physical force likely to cause serious bodily injury or death while committing specified sexual battery offenses commits a life felony, etc. CF 02/01/2022 Favorable CJ 02/08/2022 Fav/CS RC 02/15/2022 Fav/CS	Fav/CS Yeas 17 Nays 0
9	**CS/SB 722** Criminal Justice / Perry (Similar CS/H 1515)	Education for Student Inmates; Authorizing the Department of Corrections and each county, respectively, to contract with Florida College System institutions to provide education services for student inmates; authorizing the expenditure of state funds for the education of state inmates who have a specified amount of time remaining to serve on their sentences, etc. CJ 02/01/2022 Fav/CS CA 02/08/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 728** Harrell (Similar CS/H 1005)	Advanced Air Mobility; Creating the Advanced Air Mobility Study Task Force adjunct to the Department of Transportation; specifying the composition of the task force; providing that task force members shall serve without compensation but are entitled to certain reimbursement; defining the term "VTOL aircraft"; requiring the task force to submit a certain report to the Governor and the Legislature by a specified date, etc. TR 12/01/2021 Favorable CA 02/02/2022 Favorable RC 02/15/2022 Fav/CS	Fav/CS Yeas 17 Nays 0
11	**CS/SB 796** Criminal Justice / Bradley (Identical CS/H 287)	Tampering with or Fabricating Physical Evidence; Providing enhanced criminal penalties for tampering with or fabricating physical evidence in certain criminal proceedings and investigations, etc. CJ 01/25/2022 Fav/CS JU 02/07/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
12	**CS/CS/SB 876** Criminal Justice / Transportation / Pizzo (Similar CS/H 399, Compare S 258)	Stunt Driving on Highways; Prohibiting specified acts relating to street takeovers or stunt driving on highways, roadways, or parking lots; prohibiting the operation of a vehicle for specified purposes; prohibiting a person from being a spectator at a street takeover; prohibiting a person from falsely assuming or pretending to be specified persons by the unlawful use of certain lights, etc. TR 01/12/2022 Fav/CS CJ 02/01/2022 Fav/CS RC 02/15/2022 Fav/CS	Fav/CS Yeas 16 Nays 0
13	**SB 892** Burgess (Similar CS/H 225)	Charter School Charters; Requiring a request for a consolidation of multiple charters to be approved or denied within a specified timeframe; requiring a charter school sponsor to provide to the charter school specified information relating to a denial of a request for a consolidation within a certain timeframe; providing for the automatic renewal of a charter under certain circumstances, etc. ED 01/25/2022 Favorable CA 02/08/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 12 Nays 5

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**SB 940** Baxley (Compare CS/H 375, H 565, Linked CS/S 942)	Professional Structural Engineers; Prohibiting a person who is not licensed as an engineer from using a specified name or title; authorizing the Board of Professional Engineers to refuse to certify an applicant for a professional structural engineer license for certain reasons; providing licensure and application requirements for a professional structural engineer license; specifying acts that constitute grounds for disciplinary action, including civil penalties, against a professional structural engineer, etc. RI 01/25/2022 Favorable CM 02/07/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 16 Nays 0
15	**SB 968** Polsky (Identical H 649)	Individual Retirement Accounts; Specifying that certain interests received by a transferee after a divorce are exempt from claims of creditors upon being awarded to or received by the transferee; specifying that such interests remain exempt, etc. BI 01/12/2022 Favorable JU 01/24/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 16 Nays 0
16	**CS/SB 1046** Governmental Oversight and Accountability / Hooper (Similar CS/CS/H 773)	Public Records/Law Enforcement Geolocation Information; Defining the term “law enforcement geolocation information”; providing an exemption from public records requirements for law enforcement geolocation information held by a law enforcement agency; requiring law enforcement agencies to disclose law enforcement geolocation information to state and federal law enforcement agencies, upon request; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/25/2022 Favorable GO 02/02/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
17	**SB 1054** Hutson (Similar H 1115)	Financial Literacy Instruction in Public Schools; Citing this act as the “Dorothy L. Hukill Financial Literacy Act”; revising the requirements regarding financial literacy for the Next Generation Sunshine State Standards; revising the required credits for a standard high school diploma to include one-half credit of instruction in personal financial literacy and money management and seven and one-half, rather than eight, credits in electives, etc. ED 02/08/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**CS/SR 1064** Military and Veterans Affairs, Space, and Domestic Security / Garcia (Compare HM 1383)	United States Department of State's List of Foreign Terrorist Organizations; Opposing the Biden Administration's removal of the Revolutionary Armed Forces of Colombia (FARC) from the United States Department of State's list of Foreign Terrorist Organizations, etc. MS 02/01/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 15 Nays 0
19	**CS/SB 1066** Banking and Insurance / Burgess (Similar H 689)	Workers' Compensation Benefits for First Responders; Providing that the time for specified notice in certain cases of compensable posttraumatic stress disorder is measured from the time of the qualifying event or the diagnosis of the disorder, rather than the manifestation of the disorder, whichever is later, etc. BI 02/02/2022 Fav/CS CA 02/08/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
20	**CS/SB 1182** Banking and Insurance / Broxson (Similar CS/H 381)	Breach of Bond Costs; Redefining the term "jurisdiction"; providing for the exoneration from liability of a surety on a bond under certain circumstances if the surety agrees in writing to pay the costs and expenses incurred in returning the defendant to the jurisdiction of the court; providing for calculation of costs and expenses, etc. BI 01/25/2022 Fav/CS CJ 02/08/2022 Favorable RC 02/15/2022 Fav/CS	Fav/CS Yeas 16 Nays 0
21	**SB 1190** Boyd (Similar CS/H 785)	Two-way Radio Communication Enhancement Systems; Authorizing the use of two-way radio communication enhancement systems to comply with certain radio signal strength requirements in the Florida Fire Prevention Code; specifying that such systems or equivalent systems are not required in certain apartment buildings, etc. CA 01/18/2022 Favorable BI 02/02/2022 Favorable RC 02/15/2022 Fav/CS	Fav/CS Yeas 15 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**SB 1204** Broxson (Identical H 873)	Public Records/Information or Records/Executions; Providing an exemption from public records requirements for information or records that identify or could reasonably lead to the identification of any person or entity that participates in an execution; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/25/2022 Favorable JU 02/07/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 9 Nays 6
23	**CS/CS/SB 1222** Judiciary / Health Policy / Bean (Similar CS/H 937)	Acute and Post-acute Hospital Care at Home; Authorizing paramedics to perform certain life support services to patients receiving acute and post-acute hospital care at home under certain circumstances; providing that a physician or medical director who supervises or directs the provision of such services by a paramedic is liable for any act or omission during the provision of such services; specifying that Class III institutional pharmacies may dispense, distribute, compound, and fill prescriptions for medicinal drugs for inpatient treatment and patients receiving acute and post-acute hospital care at home, etc. HP 01/19/2022 Fav/CS JU 02/07/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 16 Nays 0
24	**SB 1236** Jones (Similar CS/H 1561)	County and Municipal Detention Facilities; Creating the Florida Model Jail Standards Commission to supersede a working group; specifying that each entity that operates a municipal or county detention facility shall adopt the Florida Model Jail Standards approved by the commission; requiring the jail standards to include criteria and standards for what actions result in serious violations and notable violations; specifying that the jail standards must require that each county detention facility and municipal detention facility be inspected, at a minimum, twice annually; providing financial penalties for persons in charge of detention facilities who refuse to allow inspections or who refuse to provide access to detention facilities, or for facilities found to be noncompliant with the jail standards during an annual inspection or any reinspection, etc. CA 01/25/2022 Favorable CJ 02/08/2022 Favorable RC 02/15/2022 Fav/CS	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	**CS/SB 1246** Commerce and Tourism / Gruters (Identical CS/H 925, Compare H 639)	Benchmark Replacements for the London Interbank Offered Rate; Requiring that recommended benchmark replacements selected or recommended by specified persons be benchmark replacements on the United States dollar London Interbank Offered Rate (LIBOR) replacement date for certain contracts, securities, and instruments; authorizing specified persons to select benchmark replacements under certain circumstances; requiring benchmark replacement conforming changes to become an integral part of contracts, securities, and instruments under certain circumstances; providing that a person is not liable for damages and is not subject to claims and requests for equitable relief under certain circumstances, etc. BI 02/02/2022 Favorable CM 02/07/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
26	**SB 1258** Jones (Identical H 855)	Managed Care Plan Performance; Requiring managed care plans to collect and report specified measures beginning with a certain data reporting period; requiring plans to stratify reported measures by specified categories beginning with a certain data reporting period; requiring a plan's performance to be published on its website in a specified manner; requiring the Agency for Health Care Administration to use the measures to monitor plan performance, etc. HP 01/26/2022 Favorable BI 02/08/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
27	**CS/SB 1326** Community Affairs / Rodriguez (Similar CS/H 513)	Comprehensive Review Study of the Central and Southern Florida Project; Requiring the South Florida Water Management District to prepare and submit a consolidated annual report regarding the status of a specified study to the Office of Economic and Demographic Research, the Department of Environmental Protection, the Governor, and the Legislature by a specified date, etc. EN 01/18/2022 Favorable CA 02/08/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	**CS/CS/SB 1332** Community Affairs / Regulated Industries / Wright (Similar CS/H 481)	Temporary Underground Power Panels; Prohibiting counties from enacting ordinances, regulations, or policies that prevent certain electric utilities from installing temporary underground power panels and from requiring subsequent inspections of such panels as a condition of a certificate of occupancy under specified conditions; defining the term “temporary underground power panel”, etc. RI 01/25/2022 Fav/CS CA 02/08/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
29	**CS/SB 1338** Community Affairs / Diaz (Similar CS/H 1411)	Floating Solar Facilities; Defining the term “floating solar facility”; providing that a floating solar facility must be a permitted use in appropriate land use categories in each local government’s comprehensive plan; requiring each local government to amend its development regulations to promote the expanded use of floating solar facilities; requiring the Office of Energy within the Department of Agriculture and Consumer Services to submit specified recommendations to the Legislature to provide a regulatory framework relating to floating solar facilities, etc. RI 02/01/2022 Favorable CA 02/08/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
30	**SB 1360** Wright (Identical H 1195, Compare S 2502)	Governor’s Medal of Freedom; Abrogating the repeal of provisions authorizing the Governor to present the Governor’s Medal of Freedom to certain persons, etc. MS 02/01/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
31	**CS/SB 1368** Banking and Insurance / Gruters (Similar CS/H 1001, Compare H 1229)	Trusts; Revising criteria for application of the rule against perpetuities to trusts created on or after a specified date; specifying that the terms of a trust do not prevail over a trustee’s duty to account to qualified beneficiaries under certain circumstances; clarifying circumstances under which notice, or the sending of a document, to a person under the Florida Trust Code is deemed satisfied; providing that the terms of a trust may permit for accounting to the qualified beneficiaries only under certain circumstances, etc. JU 01/31/2022 Favorable BI 02/08/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
32	**SB 1380** Rodriguez (Similar CS/H 219)	Real Property Rights; Revising rights that are not affected or extinguished by marketable record titles; revising the types of interests extinguished by marketable record titles; authorizing owners or operators of private property used for motor vehicle parking to establish rules, rates, and fines governing private persons parking on the property; prohibiting counties and municipalities from enacting any ordinance or regulation attempting to restrict or prohibit the owner or operator from adopting such rules, rates, or fines, etc. JU 01/31/2022 Favorable CA 02/08/2022 Favorable RC 02/15/2022 Fav/CS	Fav/CS Yeas 17 Nays 0
33	**CS/CS/SB 1432** Community Affairs / Environment and Natural Resources / Rodriguez (Similar H 1065)	Vessel Anchoring; Providing tenancy and lease conditions for approved and permitted mooring and mooring fields in Monroe County; requiring certain anchored vessels in Monroe County to be re-anchored in a new location that meets certain requirements according to a specified timeframe; requiring the Fish and Wildlife Conservation Commission, in consultation with certain entities, to establish designated anchoring areas within the county by rule; providing an exception for certain domiciled vessels; requiring certain vessels equipped with marine sanitation devices to maintain specified records of such devices, etc. EN 01/18/2022 Fav/CS CA 02/02/2022 Fav/CS RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
34	**CS/SB 1502** Banking and Insurance / Powell (Similar H 625)	Estates and Trusts; Providing that the requirement for a claimant to file an independent action is satisfied if specified actions are taken; specifying that claimants, not creditors, are given certain priority of claims; revising the types of trusts deemed to have been contributed by a settlor's spouse and not the settlor; providing that a trustee may resign by specified procedure and with notice to certain parties, etc. BI 01/25/2022 Fav/CS JU 02/07/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
35	**CS/SB 1526** Banking and Insurance / Boyd (Similar CS/H 1413)	Public Records/Annuity Contract Payees; Providing an exemption from public records requirements for personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee contained in the court records for a proceeding for the approval of the transfer of structured settlement payment rights; limiting such exemption to a specified period; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 01/25/2022 Fav/CS JU 02/07/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 16 Nays 0
36	**SB 1552** Gruters	Direct-support Organization for the Florida Prepaid College Board; Removing the scheduled repeal of the Florida Prepaid College Board's authority to establish a direct-support organization, etc. ED 01/25/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
37	**CS/CS/SB 1564** Regulated Industries / Commerce and Tourism / Hutson (Compare CS/CS/H 1095)	Telephone Solicitation; Prohibiting the use of automated telephone dialing systems using certain types of messages under certain circumstances; authorizing such use in response to certain inquiries; providing a limitation; revising provisions for the award of attorney fees and costs, etc. CM 01/24/2022 Fav/CS RI 02/08/2022 Fav/CS RC 02/15/2022 Fav/CS	Fav/CS Yeas 15 Nays 2
38	**CS/SB 1954** Transportation / Wright (Similar H 1435)	Code and Traffic Enforcement; Authorizing a sheriff or chief administrative officer of a county or municipality to designate a special event zone under certain circumstances on a roadway, street, or highway; authorizing a law enforcement officer to impound the motor vehicle of a person who commits a noncriminal traffic infraction or a criminal traffic violation in a special event zone; revising the types of soundmaking devices or instruments subject to the prohibition against operating or amplifying sound from within a motor vehicle in a certain manner; prohibiting such operation or amplification in areas adjoining private residences, etc. TR 02/02/2022 Fav/CS CA 02/08/2022 Favorable RC 02/15/2022 Favorable	Favorable Yeas 11 Nays 6

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
39	**CS/CS/HB 7001** Rules Committee / State Affairs Committee / Public Integrity and Elections Committee / Koster	Implementation of the Constitutional Prohibition Against Lobbying by a Public Officer; Provides definitions for purpose of implementing s. 8(f), Art. II of State Constitution; provides penalties for violation of constitutional prohibition against lobbying by public officer; provides for collection of such penalties. RC 02/15/2022 Favorable	Favorable Yeas 17 Nays 0
40	**HB 7003** Public Integrity and Elections Committee / Koster	Implementation of the Constitutional Prohibition Against Lobbying by a Former Justice or Judge; Provides definitions for purpose of implementing s. 13(b), Art. V of State Constitution; provides penalties for violation of constitutional prohibition against lobbying by former justice or judge; provides for collection of such penalties. RC 02/15/2022 Favorable	Favorable 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.)

Prepared By: The Professional Staff of the Committee on Rules

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	**Favorable**
2.	Davis	Cibula	JU	**Fav/CS**
3.	Stokes	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

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.[1]

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.[2]
- 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.[3, 4]

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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[1] FLA CONST. art. 1, s. 16 (b).

[2] 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).

[3] 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.

[4] 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.[5]

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.[6]

Florida Statutes

Section 960.001, F.S., provides that certain agencies[7] 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.[8]
- Information concerning services available to victims of adult and juvenile crimes, including:

[5] FLA. CONST. art. 1, s. 16 (b)(6).
[6] FLA. CONST. art. 1, s. 16 (b)(11).
[7] 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.
[8] 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. [9]
- Information regarding the "victim notification card,"[10] 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.[11]

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

[9] Section 960.001(1)(a)1.-7., F.S.
[10] 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.
[11] 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.[12]

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.[13] 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.[14] 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

[12] The Florida Bar, *Frequently Asked Questions*, https://www.floridabar.org/about/faq/ (last visited Jan. 27, 2022).
[13] *Id.*
[14] The Florida Bar, *What We Do*, https://www.floridabar.org/about/faq/what-we-do/#Findingyoualawyer (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 960.0021(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.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2022	.	
	.	
	.	
	.	

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 20221012c1

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

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

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

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:

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

985.036 Rights of victims; juvenile proceedings.—

(1) Nothing in this chapter 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, upon request, 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 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.

Section 4. This act shall take effect July 1, 2022.

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 **Senate Bill #1012**, relating to Victims of Crime, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 190
INTRODUCER:	Criminal Justice Committee; Judiciary Committee; and Senator Brodeur
SUBJECT:	Controlled Substances
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	**Fav/CS**
2.	Erickson	Jones	CJ	**Fav/CS**
3.	Ravelo	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 190 addresses two recommendations of the Statewide Task Force on Opioid Abuse (Task Force) and creates an exception to the definition of "drug paraphernalia."

The bill amends s. 782.04, F.S., which punishes an adult for first degree murder if the adult unlawfully distributes a listed controlled substance or a mixture containing the substance, when it is proven that the substance or mixture was the proximate cause of a user's death. The bill adds methamphetamine to the list of scheduled controlled substances applicable to the offense and makes conforming changes. The addition of methamphetamine was a recommendation by the Task Force.

The bill also amends s. 893.13, F.S., to create an enhanced penalty for the sale of a controlled substance if the offense is committed within 1,000 feet of certain facilities that often provide health care and substance abuse treatment. Depending on the substance, the enhancement increases a third degree felony to a second degree felony, and increases a second degree felony to a first degree felony. This change was also recommended by the Task Force.

Finally, the bill amends s. 893.145, F.S., to exclude from the definition of "drug paraphernalia" narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2022.

II. Present Situation:

On April 1, 2019, citing an increase in the number of opioid-caused deaths in Florida, Governor DeSantis created the Statewide Task Force on Opioid Abuse (Task Force).[1] The Governor directed the Task Force to develop a statewide strategy to identify best practices to combat the opioid epidemic through education, treatment, prevention, recovery, and law enforcement, and to compile a report containing legislative recommendations. Two specific recommendations made by the Task Force relating to law enforcement included:

- Adding methamphetamine as a controlled substance qualifying for prosecution as a first degree murder offense when its distribution proximately causes the user's death; and
- Enhancing criminal penalties for the sale of a controlled substance within 1,000 feet of substance abuse treatment facilities.[2]

The Task Force's report did not address the proximate cause requirement for the capital offense of the unlawful distribution of certain controlled substances resulting in the death of the user.

Murder by Unlawful Distribution of Certain Controlled Substances

Section 782.04(1)(a)3., F.S., provides that first degree murder includes unlawfully killing of a human being which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to be the *proximate cause* of the death of the user:

- A Schedule I controlled substance;[3]
- Cocaine;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;
- Methadone;
- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil; or
- A controlled substance analog of any of the above-listed controlled substances.[4]

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[1] Fla. Exec. Order No. 19-97 (April 1, 2019), *available at* https://www.flgov.com/wp-content/uploads/2019/04/EO-19-97.pdf (last visited on Feb. 3, 2022).

[2] Florida Statewide Task Force on Opioid Abuse, *Findings and Recommendation of the Statewide Task Force on Opioid Abuse*, 45 (April 1, 2020), *available at* https://doseofrealityfl.com/pdfs/opioid-task-force-findings-recommendations-opioid-abuse.pdf (last visited on Feb. 3, 2022).

[3] *See* s. 893.03(1), F.S.

[4] A "controlled substance analog" is defined in s. 893.0356(2)(a), F.S., as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- Is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and

First degree murder is a capital felony,[5] punishable by death or life imprisonment.[6]

Third Degree Murder – Exclusion of Unlawful Distribution of Certain Controlled Substances

Section 782.04(4), F.S., provides that it is third degree murder, a second degree felony,[7] when an unlawful killing of a human being, was perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate any felony other than any felony listed in subsection (4). This list of excluded felonies includes unlawful distribution by a person 18 years of age or older of any of the following substances when such substance is proven to be the *proximate cause* of the death of the user:

- A Schedule I controlled substance;
- Cocaine; or
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium.[8]

Florida Standard Jury Instructions for Murder by Unlawful Distribution of Certain Controlled Substances

The Florida Standard Jury instructions for murder by unlawful distribution of certain controlled substances defines *proximate cause* as conduct "that was the *primary* or moving cause of the death; the death would not have occurred but for the defendant's conduct; and the death was a natural and reasonably anticipated consequence of the defendant's conduct."[9] Because the instruction requires the substance be the *primary* cause of death, a prosecutor may encounter certain scenarios where he or she cannot prove a specific substance was the primary cause of death. A victim may, for example, have ingested lethal amounts of both cocaine and opium, each of which could have caused his or her death. Prosecutors have reported difficulty obtaining convictions in scenarios such as this, as it is virtually impossible to determine if something was the *primary* cause if there are multiple sufficient possibilities that were all equally lethal.[10]

Crimes with an Element of Causation

The Florida Supreme Court has identified "two distinct subelements" of causation for crimes that include an element of causation.[11]

- Has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.

[5] Section 782.04(1)(a)3., F.S

[6] Section 782.082, F.S.

[7] A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S.

[8] Section 782.04(4)(l), F.S.

[9] Fla. Std. Jury Instr. (Crim.) 7.3(a) (emphasis added by staff), *available at* https://www-media.floridabar.org/uploads/2021/04/7.3aCrimJI.rtf (last visited on Feb. 3, 2022); and *Aumuller v. State*, 944 So 2d 1137, 1141-1142 (Fla. 2d DCA 2006).

[10] Office Memorandum to Bob Cortes from Daniel E. Faggard, Assistant State Attorney, Eighteenth Judicial Circuit, Re: Substantial Factor Test (Feb. 5, 2021) (on file with the Senate Committee on Criminal Justice).

[11] *Eversely v. State*, 748 So.2d 963, 966 (Fla. 1999). Courts consider "two basic questions in determining proximate cause: (1) whether the prohibited result of the defendant's conduct is beyond the scope of any fair assessment of the danger created

> As legal scholars have recognized, before a defendant can be convicted of a crime that includes an element of causation, the State must prove beyond a reasonable doubt that the defendant's conduct was (1) the "cause in fact" and (2) the "legal cause" (often called "proximate cause" of the relevant harm.[12]

Typically, to establish the "cause in fact" subelement, the State "must demonstrate that 'but for' the defendant's conduct, the harm would not have occurred."[13] "A defendant can rebut this showing by demonstrating that the harm would have occurred in any event, regardless of the defendant's conduct."[14] However, "[i]n those rare circumstances where 'two causes, each alone sufficient to bring about the harmful result, operate together to cause it,' the 'but for' test becomes impossible to prove"[15] and "the State may prove the "'cause-in-fact' causation by demonstrating that the defendants conduct was a 'substantial factor' in bringing about the harm."[16]

Controlled Substance Offenses Committed Within 1,000 Feet of Certain Places

Florida law prohibits a person from selling, manufacturing, or delivering, or possession with the intent to do the same, a controlled substance.[17] The penalty for selling a controlled substance varies depending on several factors, including the type and amount of the substance sold and the location where the sale takes place. Generally, the sale, etc., of a controlled substance is punishable as either a second degree felony or third degree felony.[18] However, these felony penalties are enhanced (by one felony degree) if the sale, etc., occurs within 1,000 feet of the real property of specified locations, including a:

- Child care facility;
- Public or private elementary, middle, or secondary school;
- State, county, or municipal park;
- Community center or publicly owned recreational facility;
- Public or private college, university, or other postsecondary institution;
- Physical place of worship at which a church or religious organization regularly conducts religious services;
- Convenience business;
- Public housing facility; or
- Assisted living facility.[19]

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by the defendant's conduct and (2) whether it would be otherwise unjust, based on fairness and policy considerations, to hold the defendant criminally responsible for the prohibited result." *Id.* at 967 (citations omitted).

[12] *Id.* at 966-967 (citations omitted).

[13] *Id.* at 967 (citations omitted).

[14] *Id.* (citation omitted).

[15] *Id.*, quoting 1 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* s. 3.12, at 394 (footnote and other citations omitted).

[16] *Id.* (citations omitted).

[17] Section 893.13, F.S.

[18] Section 893.13(1), F.S. A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.

[19] *See* s. 893.13(1)(c), (d), (e), (f), and (h), F.S.

III. Effect of Proposed Changes:

The bill addresses two recommendations of the Statewide Task Force on Opioid Abuse (Task Force) and creates an exception to the definition of "drug paraphernalia."

Section 1 of the bill amends s. 782.04, F.S., which punishes an adult for first degree murder if the adult unlawfully distributes a listed controlled substance or a mixture containing the substance when it is proven that the substance or mixture was the proximate cause of a user's death. The bill adds methamphetamine to the list of scheduled controlled substances applicable to the offense and makes conforming changes. The addition of methamphetamine was a recommendation by the Task Force.

Section 2 of the bill amends s. 893.13, F.S., to create an enhanced penalty for the sale of a controlled substance if the offense is committed within 1,000 feet of certain facilities that often provide health care and substance abuse treatment. This change was also recommended by the Task Force. The facilities covered include any:

- Mental health facility under ch. 394, F.S.;[20]
- Health care facility licensed under ch. 395, F.S.,[21] which provides substance abuse treatment;
- Licensed service provider as defined in s. 397.311, F.S.;[22]
- Facility providing services that include clinical treatment, intervention, or prevention as described in s. 397.311(26), F.S.;[23]
- Recovery residence as defined in s. 397.311, F.S.;[24] or
- Pain management clinic as defined in ss. 458.3265(1)(a)1.c. or s. 459.0137(1)(a)1.c., F.S.[25]

Depending upon the controlled substance, the enhancement increases a third degree felony to a second degree felony, and increases a second degree felony to a first degree felony.[26]

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[20] Section 394.455(17), F.S., defines "facility" as any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have or who have been diagnosed as having a mental illness or substance abuse impairment. The term does not include a program or an entity licensed under ch. 400, F.S. (nursing homes and related facilities) or ch. 429 (assisted care communities).

[21] Section 395.002(17), F.S., defines a "licensed facility" as a hospital or ambulatory surgical center licensed in accordance with ch. 395, F.S. (hospital licensing and regulation).

[22] Section 397.311(25), F.S., defines a "licensed service provider" as a public agency under ch. 397, F.S. (substance abuse services), a private for-profit or not-for-profit agency under ch. 397, F.S., a physician or any other private practitioner licensed under ch. 397, F.S., or a hospital that offers substance abuse services through one or more licensed service components.

[23] Section 397.311(26), F.S., provides that licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services. Clinical treatment services include, but are not limited to, medication-assisted treatment for opioid use disorders.

[24] Section 397.311(38), F.S., defines "recovery residence" as a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

[25] Section 458.3265(1)(a)1.c., F.S., defines a "pain-management clinic" as any publicly or privately owned facility: that advertises in any medium for any type of pain-management services; or where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain. Section 459.0137(1)(a)1.c., F.S., includes the same definition of "pain-management clinic."

[26] Generally, a first degree felony is punishable by up to 30 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S.

Section 3 of the bill amends s. 893.145, F.S., to exclude from the definition of "drug paraphernalia" narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.

Section 4 of the bill provides that the bill takes effect October 1, 2022.

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, 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The EDR preliminarily estimates that the bill will have a "positive indeterminate" prison bed

impact (an unquantifiable increase in prison beds).[27] The EDR adds the following information relevant to its estimate:

> Per [Department of Corrections], in FY 18-19, there was 1 new commitment under s. 782.04, F.S. relating to drugs, and no new commitments in FY 19-20 or FY 20-21. There were 2 new commitments for drug activity near an assisted living facility in FY 18-19 and no new commitments in FY 19-20. There was 1 new commitment in FY 20-21. Although this number is low, there are generally over 500 new commitments a year for selling drugs near a restricted place. Per Florida Department of Health, in CY 2019, there were 38,985 nonfatal overdoses and 5,352 fatal overdoses. Of the fatal overdoses, methamphetamine showed 896 where it was a contributing drug. Additionally, the drugs listed under s. 782.04(1), F.S. showed similar high numbers as contributing to fatal overdoses. It is not known how prison admissions will be impacted by this new language.[28]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 782.04, 893.13 and 893.145.

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 Criminal Justice on February 8, 2022:
The committee substitute:

- Removes provisions of the bill that change the "proximate cause" element of first degree murder by unlawful distribution of a listed controlled substance; and
- Excludes from the definition of "drug paraphernalia" narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.

CS by Judiciary on January 10, 2022:
The committee substitute:

- Reorganizes provisions of the bill to make it identical to HB 95 (2022).

[27] *CS/SB 190 – Controlled Substances (Identical CS/HB 95)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).
[28] *Id*.

- The committee substitute does not substantially change the bill and only differs in technical drafting choices.

B. Amendments:

None.

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

By the Committees on Criminal Justice; and Judiciary; and
Senator Brodeur

591-02805-22 2022190c2

A bill to be entitled

An act relating to controlled substances; amending s. 782.04, F.S.; revising the elements that constitute the capital offense of murder in the first degree; revising the elements that constitute the felony offense of murder in the third degree; amending s. 893.13, F.S.; prohibiting specified activities involving controlled substances within 1,000 feet of additional specified facilities; providing criminal penalties; amending s. 893.145, F.S.; revising the definition of the term "drug paraphernalia"; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (4) of section 782.04, Florida Statutes, are amended to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;

2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:

a. Trafficking offense prohibited by s. 893.135(1),

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

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g. Escape,

h. Aggravated child abuse,

i. Aggravated abuse of an elderly person or disabled adult,

j. Aircraft piracy,

k. Unlawful throwing, placing, or discharging of a destructive device or bomb,

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

p. Resisting an officer with violence to his or her person,

q. Aggravated fleeing or eluding with serious bodily injury or death,

r. Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35, or

s. Human trafficking; or

3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to be the proximate cause of the death of the user:

a. A substance controlled under s. 893.03(1);

b. Cocaine, as described in s. 893.03(2)(a)4.;

c. Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;

d. Methadone;

e. Alfentanil, as described in s. 893.03(2)(b)1.;

f. Carfentanil, as described in s. 893.03(2)(b)6.;

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g. Fentanyl, as described in s. 893.03(2)(b)9.;

h. Sufentanil, as described in s. 893.03(2)(b)30.; ~~or~~

i. Methamphetamine, as described in s. 893.03(2)(c)5.; or

j. A controlled substance analog, as described in s. 893.0356, of any substance specified in sub-subparagraphs a.-i. ~~sub-subparagraphs a. h.~~,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.

(4) The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

(a) Trafficking offense prohibited by s. 893.135(1),

(b) Arson,

(c) Sexual battery,

(d) Robbery,

(e) Burglary,

(f) Kidnapping,

(g) Escape,

(h) Aggravated child abuse,

(i) Aggravated abuse of an elderly person or disabled adult,

(j) Aircraft piracy,

(k) Unlawful throwing, placing, or discharging of a destructive device or bomb,

(l) Unlawful distribution of any substance listed in sub-subparagraphs (1)(a)3.a.-j. ~~controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or opium or any~~

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~~synthetic or natural salt, compound, derivative, or preparation of opium~~ by a person 18 years of age or older, when such substance ~~drug~~ is proven to be the proximate cause of the death of the user,

(m) Carjacking,

(n) Home-invasion robbery,

(o) Aggravated stalking,

(p) Murder of another human being,

(q) Aggravated fleeing or eluding with serious bodily injury or death,

(r) Resisting an officer with violence to his or her person, or

(s) Felony that is an act of terrorism or is in furtherance of an act of terrorism, including a felony under s. 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35,

is murder in the third degree and constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (h) of subsection (1) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(1)

(h) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a mental health facility, as that term is used in chapter 394; a health care facility licensed under chapter 395 which provides

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substance abuse treatment; a licensed service provider as defined in s. 397.311; a facility providing services that include clinical treatment, intervention, or prevention as described in s. 397.311(26); a recovery residence as defined in s. 397.311; an assisted living facility~~,~~ as defined ~~that term is used~~ in chapter 429; or a pain management clinic as defined in s. 458.3265(1)(a)1.c. or s. 459.0137(1)(a)1.c. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

Section 3. Subsection (4) of section 893.145, Florida Statutes, is amended to read:

893.145 "Drug paraphernalia" defined.—The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing,

containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter or s. 877.111. Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture. The term includes, but is not limited to:

(4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, excluding narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl as described in s. 893.03(2)(b)9. or a controlled substance analog, as defined in s. 893.0356, of fentanyl.

Section 4. This act shall take effect October 1, 2022.

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 9, 2022

I respectfully request that **Senate Bill 190**, relating to **Controlled Substances,** be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.



Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

Bill Summary

The bill amends s. 782.04, F.S., which punishes an adult for first-degree murder if the adult unlawfully distributes a listed controlled substance or a mixture containing the substance, when it is proven that the substance or mixture was the proximate cause of a user's death. The bill adds methamphetamine to the list of scheduled controlled substances applicable to the offense and makes conforming changes. The bill also amends s. 893.13, F.S., to create an enhanced penalty for the sale of a controlled substance if the offense is committed within 1,000 feet of certain facilities that often provide health care and substance abuse treatment. Depending on the substance, the enhancement increases a third-degree felony to a second-degree felony and increases a second-degree felony to a first-degree felony. Finally, the bill amends s. 893.145, F.S., to exclude from the definition of "drug paraphernalia" narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

Rules
Committee

190
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christie Arnold

Phone 850-339-0075

Address 201 W. Park Avenue
Street

Email carnold@flaccb.org

Tallahassee FL ~~32801~~ 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Conference of Catholic Bishops

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

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

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

S-001 (08/10/2021)

The Florida Senate

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2/15/2022
Meeting Date

Rules
Committee

190
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Dunagan

Phone 850-877-2165

Address 2617 Mahan Drive
Street

Email mdunagan@flsheriffs.org

Tallahassee | FL | 32308
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 Sheriffs Association

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

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

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S-001 (08/10/2021)

The Florida Senate

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2/15/22
Meeting Date

Rules
Committee

SB 190
Bill Number or Topic

Amendment Barcode (if applicable)

Name Candice Ericks

Phone 954-648-1204

Address 205 S. Adams
Street

Email Candice.ericks@gmail.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Seminole Sheriff Office

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

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

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S-001 (08/10/2021)

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2.15.22
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Rules
Committee

190
Bill Number or Topic

Amendment Barcode (if applicable)

Name [redacted] Dann Scott SPLC Action Phone 8502534420

Address 201 W Park Ave #100 Email
Street

Tall. FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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2/15/22
Meeting Date

Rules
Committee

SB 190
Bill Number or Topic

Amendment Barcode (if applicable)

Name Neisha-Rose Hines

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Address 4343 W. Flagler
Street

Miami FL
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:
ACLU FL

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

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

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S-001 (08/10/2021)

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2/15/22
Meeting Date

RULES
Committee

190
Bill Number or Topic

Amendment Barcode (if applicable)

Name Allie McNair

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Email amcnair@flsheriffs.org

TLH FL 32308
City State Zip

not read

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 Sheriffs Association

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

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

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

This information was not read into the record by the Chair

-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/CS/SB 224
INTRODUCER:	Rules Committee; Environment and Natural Resources Committee; and Senator Gruters and others
SUBJECT:	Regulation of Smoking in Public Places
DATE:	February 15, 2022 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 224 amends the "Florida Clean Indoor Air Act," which regulates vaping and tobacco smoking in Florida. The bill allows counties and municipalities to restrict smoking within the boundaries of any of the public beaches and public parks they own, except with regard to the smoking of cigars that do not contain a filter or a plastic tip or the smoking of pipe tobacco in a pipe. Currently, the regulation of smoking is preempted to the state, and counties and municipalities are prohibited from regulating smoking. "Smoking" is defined in ch. 386, F.S., as "inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product."

The bill changes the title of the "Florida Clean Indoor Air Act" to the "Florida Clean Air Act" to account for the broader application of the act proposed in the bill.

II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates vaping and tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.[1]

[1] Section 386.202, F.S.

Florida Constitution

Tobacco Smoking

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an "enclosed indoor workplace," in part, as "anyplace where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers … without regard to whether work is occurring at any given time." The amendment defines "work" as "any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not." The amendment provides limited exceptions for private residences "whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof," retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

The constitutional amendment directed the Legislature to implement the "amendment in a manner consistent with its broad purpose and stated terms." The amendment required that implementing legislation have an effective date of no later than July 1, 2003, and required that implementing legislation provide civil penalties for violations, provide for administrative enforcement, and require and authorize agency rules for implementation and enforcement. The amendment further provided that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

Vaping

On November 6, 2018, the voters of Florida approved Amendment 9 to the Florida Constitution, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.[2] The use of e-cigarettes is commonly referred to as vaping.

Amendment 9 adds vapor-generating electronic devices to the current prohibition against tobacco smoking in enclosed indoor workplaces. The amendment makes exceptions for the same enclosed indoor workplace locations where tobacco smoking is permitted and further permits tobacco smoking and the use of vapor-generating electronic devices in a "vapor-generating electronic device retailer."

The amendment defines a "vapor-generating electronic device retailer" to mean "any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental."

A vapor-generating electronic device is defined as "any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance." The definition includes electronic cigarettes, electronic cigars, electronic

[2] Amendment 9 also bans offshore oil and natural gas drilling on lands beneath state waters. See FLA. CONST. art II, s. 7.

cigarillos, electronic pipes, and other similar devices or products, replacement cartridges for such devices, and other containers of a solution or other substance intended to be used with or within the devices.

Section 20, Art. X, Florida Constitution, as amended, directs the Legislature to implement the "amendment in a manner consistent with its broad purpose and stated terms." The implementing legislation must have an effective date of no later than July 1 of the year following approval (July 1, 2019). The implementing legislation must also provide civil penalties for violations, provide for administrative enforcement, and require and authorize agency rules for implementation and enforcement. The Legislature may enact legislation more restrictive of tobacco smoking or vaping than that provided in the State Constitution.

Under the amendment, local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Florida's Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, Laws of Fla., which amended part II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment's prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace unless the act provides an exception. The act adopts and implements the amendment's definitions and adopts the amendment's exceptions for private residences whenever not being used for certain commercial purposes;[3] stand-alone bars;[4] designated smoking rooms in hotels and other public lodging establishments;[5] and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.[6]

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to DOH and DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.[7] The penalty for a first violation is a fine of not less than $250 and not more than $750. The act provides fines for subsequent violations in the amount of not less than $500 and not more than $2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine of not more than $100 for a first violation and not more than $500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

[3] Section 386.2045(1), F.S. See also definition of the term "private residence" in s. 386.203(1), F.S.
[4] Section 386.2045(4), F.S. See also definition of the term "stand-alone bar" in s. 386.203(11), F.S.
[5] Section 386.2045(3), F.S. See also definition of the term "designated guest smoking room" in s. 386.203(4), F.S.
[6] Section 386.2045(2), F.S. See also definition of the term "retail tobacco shop" in s. 386.203(8), F.S.
[7] The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

During the 2019 Regular Session, the Legislature amended part II of ch. 386, F.S., to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.[8]

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Enforcement

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of ch. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed $25 or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[9]

If a person fails to comply with the directions on the citation, the person will waive his or her right to contest the citation, and the court may issue an order to show cause.[10]

Regulation of Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

As an exception to the state's preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property.

Section 386.209, F.S., adopts and implements the Florida Constitution's grant of authority to local governments to adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Regarding the issue of preemption, a Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.[11] The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s.

[8] See ch. 2019-14, Laws of Fla.
[9] Section 386.212(3), F.S.
[10] Section 386.212(4), F.S.
[11] Op. Att'y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att'y Gen. Fla. 2005-63 (Nov. 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

386.209, F.S.,[12] authorizes school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

Public Parks Owned by Counties and Municipalities

In Florida, there are 67 separate county park systems and more than 400 separate municipal park systems.[13] For example, Orange County Florida maintains and operates 118 county-owned parks, which consist of a wide array of available activities and facilities.[14] Parks provide a variety of activities to the public, including nature trails, bird watching, youth and adult athletics, bike paths, horse trails, boat ramps, fishing piers, metal detecting locations, outdoor gyms, and outdoor pavilions.[15] Additionally, municipalities within Orange County also own and operate parks and outdoor recreational facilities. For example, the City of Winter Park, within Orange County, owns and operates 11 city parks, which offer similar recreational activities.[16]

The Division of Recreation and Parks within the Florida Department of Environmental Protection (DEP) maintains a comprehensive inventory of the existing park facilities and outdoor resources in Florida. The inventory provides details about the parks and recreation areas in the state and consists of over 13,000 separate records, the majority of which are county and municipal parks.[17]

Laws in Other States

In 2009, Maine passed a law prohibiting "[smoking] tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site."[18] In 2015, Hawaii passed a law prohibiting smoking within its state park system.[19] In 2018, New Jersey banned smoking at public parks and beaches.[20] New Jersey's legislature found that "[t]he prohibition of smoking at public parks and beaches would better preserve and maintain the natural assets of this State by

[12] Chapter 2011-108, L.O.F.
[13] Florida Division of Recreation and Parks, *Frequently Asked Questions*, *available at* http://prodenv.dep.state.fl.us/DrpOrpcr/StaticFiles/FAQ.pdf (last visited Oct 21, 2021).
[14] Orange County Government Florida, *Parks*, http://www.orangecountyfl.net/CultureParks/Parks.aspx?m=lstaz#.Xcwjw8GP6Uk (last visited Feb. 2, 2022).
[15] *Id*.
[16] City of Winter Park, *Parks*, https://cityofwinterpark.org/departments/parks-recreation/parks-playgrounds/parks/ (last visited Feb. 2, 2022).
[17] Florida Division of Recreation and Parks, *Florida Outdoor Recreation Inventory*, https://floridadep.gov/parks/florida-outdoor-recreation-inventory (last visited Feb. 2, 2022).
[18] Me. Rev. Stat. tit. 22, ss. 1580-E(2) and 1541(6). Under Maine law, "'Smoking' includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. 'Smoking' includes the use of an electronic smoking device."
[19] Haw. Rev. Stat. Ann. § 184-4.5. "Smoking" is defined in the statute as "inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar, or pipe or the use of an electronic smoking device."
[20] Connecticut Office of Legislative Research, *New Jersey Law Prohibiting Smoking at Public Parks and Beaches*, *available at* https://cga.ct.gov/2018/rpt/pdf/2018-R-0208.pdf (last visited Feb. 2, 2022). The law defines "smoking" as burning, inhaling, or exhaling smoke from, or possessing a lighted cigar, cigarette, pipe, or any other substance that contains tobacco or another matter that can be smoked. It also means inhaling or exhaling smoke or vapor from an electronic smoking device.

reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public[.]"[21]

Alaska law prohibits individuals from smoking outdoors "within 10 feet of playground equipment located at a public or private school or a state or municipal park while children are present."[22] Oklahoma law designates all buildings and other properties owned or operated by the state as nonsmoking, effectively prohibiting smoking at state parks in Oklahoma, except for at any designated outdoor smoking areas.[23]

Oregon's Parks and Recreation Department prohibits smoking tobacco products at park properties but provides exceptions, including smoking in vehicles and at designated campsites.[24] Outside of Florida, many local governments in the United States have restricted or prohibited smoking in public parks.[25]

Health and Environmental Concerns

In 2020, an estimated 14.7 percent of the adults in Florida were tobacco smokers.[26] Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.[27] Exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases.[28] Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker.[29] Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.[30]

Another significant issue with tobacco smoking in natural areas is litter consisting of used cigarette filters, commonly known as cigarette butts. Cigarette butts are typically comprised

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[21] N.J. Stat. Ann. § 26:3D-56(e).
[22] Alaska Stat. Ann. ss. 18.35.301(c)(1) and 18.35.399(12). Alaska law defines "smoking" as "using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation."
[23] Okla. Stat. Ann. tit. 21, § 1247(B).
[24] Or. Admin. R. 736-010-0040(8)(j).
[25] American Nonsmokers' Rights Foundation, *Municipalities with Smokefree Park Laws* (2017), https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf (last visited Feb. 2, 2022). This document lists local governments in the U.S. that have created laws that restrict or prohibit smoking in public parks within their jurisdiction.
[26] United Health Foundation, *America's Health Rankings, Annual Report*, https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL (last visited Feb. 2, 2022).
[27] *Id.*; National Cancer Institute available at https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet (last visited Feb. 2, 2022).
[28] Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Feb. 2, 2022).
[29] *Id.*
[30] Nipapun Kungskulniti et al., *Secondhand Smoke Point-Source Exposures Assessed By Particulate Matter At Two Popular Public Beaches in Thailand*, 40 J. Public Health 3, 527–532 (2017), *available at* https://academic.oup.com/jpubhealth/article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639 (last visited Feb. 2, 2022); Ario Ruprecht, et. al, *Outdoor second-hand cigarette smoke significantly affects air quality*, European Respiratory Journal, 48 (3) 918-920, (Sept. 2016) *available at* https://erj.ersjournals.com/content/48/3/918 (last visited Feb. 2, 2022).

mainly of cellulose acetate, a plastic-like material that can take years to decompose.[31] It is estimated that, of the roughly 6 trillion cigarettes smoked annually worldwide, up to two-thirds of the cigarette butts are discarded as litter.[32] Furthermore, cigarette butts contain hazardous substances, and studies have shown these substances to be potentially toxic to animals.[33]

Under Florida law, it is illegal to discard any tobacco product as litter.[34] Discarding a cigarette butt is a noncriminal infraction, punishable by a penalty of $100 in addition to any court-ordered litter pickup or other commensurate labor.[35]

Fires are another significant issue regarding smoking tobacco in public parks. The Legislature has found that cigarettes are the leading cause of fire deaths in Florida and the nation.[36] Florida law requires that cigarettes sold in the state meet standards for reduced ignition propensity.[37] In addition to the risk of fires in buildings, Florida generally has a year-round risk of wildfire.[38] Cigarettes or other smoking materials can cause wildfires when discarded as litter. Data from the U.S. Forest Service shows that a significant number of wildfires were started by "smoking" between 1992 and 2018.[39]

III. Effect of Proposed Changes:

Section 1 changes the title of Part II of ch. 386, F.S., from "Indoor Air: Smoking and Vaping" to "Smoking and Vaping."

Section 2 amends s. 386.201, F.S., to provide that the short title of Part II of ch. 386, F.S., may be cited as the "Florida Clean Air Act," removing the reference to indoor air.

Section 3 amends s. 386.209, F.S., to provide counties and municipalities with the authority to further restrict smoking within the boundaries of any public beaches and public parks they own, except with regard to the smoking of cigars that do not contain a filter or a plastic tip or the smoking of pipe tobacco in a pipe. The bill allows municipalities to further restrict smoking, except the smoking of cigars that do not contain a filter or a plastic tip or the smoking of pipe tobacco in a pipe, within county owned beaches and parks located within the municipality's

[31] NOAA, National Ocean Service, *What Is the Most Common Form of Ocean Litter?*, https://oceanservice.noaa.gov/facts/most-common-ocean-litter.html (last visited Feb. 2, 2022).
[32] World Health Organization, *Tobacco and Its Environmental Impact: An Overview*, 24 (2017) *available at* https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf;jsessionid=8E8DFDA81D9C76448B2C9EAD445BC784?sequence=1 (last visited Feb. 2, 2022).
[33] Wenjau Lee and Chih Chun Lee, *Developmental Toxicity of Cigarette Butts - An Underdeveloped Issue*, 113 Ecotoxicology and Environmental Safety, 362-368, 362–363, 367 (2015), *available at* http://tweb.cjcu.edu.tw/journal/2015_03_04_11_23_24.114.pdf (last visited Feb. 2, 2022).
[34] Section 403.413(2)(d) and (f), (4), F.S.
[35] Section 403.413(6)(a), F.S. Littering is a noncriminal infraction if the litter does not exceed 15 pounds in weight or 27 cubic feet in volume.
[36] Section 633.142(2)(a), F.S.
[37] Section 633.142, F.S.
[38] Florida Department of Agriculture and Consumer Services, *Wildland Fire, Prevention*, https://www.fdacs.gov/Forest-Wildfire/Wildland-Fire (last visited Feb. 2, 2022).
[39] Karen C. Short, *Spatial wildfire occurrence data for the United States, 1992-2018*, (2021), *available at* https://www.fs.usda.gov/rds/archive/Catalog/RDS-2013-0009.5 (last visited Feb. 2, 2022). The data can be viewed by clicking on the file labeled "RDS-2018-0009.5_ACCDB.zip," and viewing the column labeled "STAT_CAUSE_DESCR."

jurisdiction if doing so would not conflict with a county ordinance. Although this bill specifically relates to "smoking," counties and municipalities are currently allowed to impose more restrictive regulation on the use of vapor-generating devices under s. 386.209, F.S.

The bill further provides that if a county or municipality restricts smoking within the boundaries of any public beach or public park, any related signage installed must state that smoking is prohibited except as provided in s. 386.209, F.S., and provide a scannable quick response code linked to s. 386.209, F.S.

Section 4 amends s. 381.84, F.S., to conform the reference to the short title of Part II of ch. 386, F.S., to changes made by the bill.

Section 5 amends s. 386.211, F.S., to conform references to the short title of Part II of ch. 386, F.S., to changes made by the bill.

Section 6 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Visitors to county or municipal parks who violate smoking restrictions imposed by a county or municipality may be subject to the applicable fines or civil penalties for such violations.

C. Government Sector Impact:

Counties and municipalities that opt to restrict smoking within the boundaries of public parks may incur indeterminate expenses related to enacting and enforcing such restrictions.

To the extent any imposed smoking restrictions deter or encourage visitation of county and municipal beaches and parks, local governments may experience fluctuation in revenues generated by any fees for beach and park admittance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends sections 386.201, 386.209, 381.84, and 386.211 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on February 15, 2022:
The CS provides signage requirements such that if a county or municipality restricts smoking within the boundaries of any public beach or public park, related signage must state that smoking is prohibited except as provided by law and must also include a scannable quick response code linked to the section of the law.

CS by Environment and Natural Resources on February 7, 2022:

- Limits the bill's authorization of county and municipal smoking restrictions to prevent counties and municipalities from restricting the smoking of cigars that do not have a filter or a plastic tip, or the smoking of tobacco in a pipe, within the boundaries of public beaches of public parks that they own.
- Deletes the bill's smoking prohibition in state parks.

B. Amendments:

None.

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

727890

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 41
and insert:
386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any county or municipal ~~municipal or county~~ ordinance on the subject; however:
(1)(a) Counties and municipalities may further restrict smoking within the boundaries of any public beaches or public parks that they own, except with regard to the smoking of cigars

727890

that do not contain a filter or a plastic tip or the smoking of pipe tobacco in a pipe.

(b) Municipalities may further restrict smoking within the boundaries of any public beaches or public parks that are within their jurisdiction but are owned by the county if doing so would not conflict with a county ordinance, except that they may not further restrict the smoking of cigars that do not contain a filter or plastic tip or the smoking of pipe tobacco in a pipe.

(c) If a county or municipality restricts smoking within the boundaries of any public beach or public park under this subsection, any related signage installed must clarify that the restriction does not apply to the smoking of cigars that do not contain a filter or a plastic tip or to the smoking of pipe tobacco in a pipe.~~,~~

(2) School districts may further restrict smoking by persons on school district property.

(3) This section does not preclude the adoption of county or municipal ~~municipal or county~~ ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

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

And the title is amended as follows:

Delete line 8

and insert:

under certain circumstances, with exceptions; requiring that any signs installed in relation to such restrictions include certain clarifying information; amending

713858

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
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	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment to Amendment (727890) (with title amendment)

Delete lines 20 - 25
and insert:
(c) If a county or municipality restricts smoking within the boundaries of any public beach or public park under this subsection, any related signage installed must state that smoking is prohibited except as provided in s. 386.209 and provide a scannable quick response code linked to this section.

713858

12
13 ================ T I T L E A M E N D M E N T ================
14 And the title is amended as follows:
15 Delete line 39
16 and insert:
17 restrictions include certain information;

By the Committee on Environment and Natural Resources; and Senators Gruters, Bradley, Farmer, Berman, Stewart, Rouson, Boyd, and Hooper

A bill to be entitled

An act relating to regulation of smoking in public places; revising the title of part II of ch. 386, F.S.; amending s. 386.201, F.S.; revising a short title; amending s. 386.209, F.S.; authorizing counties and municipalities to further restrict smoking within the boundaries of public beaches and public parks under certain circumstances, with exceptions; amending ss. 381.84 and 386.211, 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. Part II of chapter 386, Florida Statutes, entitled "INDOOR AIR: SMOKING AND VAPING," is renamed "SMOKING AND VAPING."

Section 2. Section 386.201, Florida Statutes, is amended to read:

386.201 Short title ~~Popular name~~.—This part may be cited as ~~by the popular name~~ the "Florida Clean ~~Indoor~~ Air Act."

Section 3. Section 386.209, Florida Statutes, is amended to read:

386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any county or municipal ~~municipal or county~~ ordinance on the subject; however, counties and municipalities may further restrict smoking within the boundaries of any public beaches or public parks that they own, except with regard to the smoking of cigars that do not contain a filter or a plastic tip or the

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

smoking of pipe tobacco in a pipe. Municipalities may further restrict smoking within the boundaries of any public beaches or public parks that are within their jurisdiction but are owned by the county if doing so would not conflict with a county ordinance, except that they may not further restrict the smoking of cigars that do not contain a filter or plastic tip or the smoking of pipe tobacco in a pipe. School districts may further restrict smoking by persons on school district property. This section does not preclude the adoption of county or municipal ~~municipal or county~~ ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

Section 4. Paragraph (h) of subsection (3) of section 381.84, Florida Statutes, is amended to read:

381.84 Comprehensive Statewide Tobacco Education and Use Prevention Program.—

(3) PROGRAM COMPONENTS AND REQUIREMENTS.—The department shall conduct a comprehensive, statewide tobacco education and use prevention program consistent with the recommendations for effective program components contained in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the CDC, as amended by the CDC. The program shall include the following components, each of which shall focus on educating people, particularly youth and their parents, about the health hazards of tobacco and discouraging the use of tobacco:

(h) *Enforcement and awareness of related laws.*—In coordination with the Department of Business and Professional Regulation, the program shall monitor the enforcement of laws, rules, and policies prohibiting the sale or other provision of

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

tobacco to minors, as well as the continued enforcement of the Florida Clean ~~Indoor~~ Air Act prescribed in chapter 386. The advertisements produced in accordance with paragraph (a) may also include information designed to make the public aware of these related laws and rules. The departments may enter into interagency agreements to carry out this program component.

Section 5. Section 386.211, Florida Statutes, is amended to read:

386.211 Public announcements in mass transportation terminals.—Announcements about the Florida Clean ~~Indoor~~ Air Act shall be made regularly over public address systems in terminals of public transportation carriers located in metropolitan statistical areas with populations over 230,000 according to the latest census. These announcements shall be made at least every 30 minutes and shall be made in appropriate languages. Each announcement must include a statement to the effect that Florida is a clean ~~indoor~~ air state and that smoking and vaping are prohibited except as provided in this part.

Section 6. This act shall take effect July 1, 2022.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

Rules
Committee

224
Bill Number or Topic

as amended
Amendment Barcode (if applicable)

Name Ed Chase

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City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Palm Beach County

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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02/15/2022
Meeting Date

Rules
Committee

CS/SB/224
Bill Number or Topic

Amendment Barcode (if applicable)

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Tallahassee FL 32308
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:

representing League of Women Voters

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

Rules
Committee

SB 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tara Taggart

Phone

Address PO Box 1757
Street

Email

Tallahassee FL 32302
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

Florida League of Cities

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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February 15, 2022
Meeting Date

Rules
Committee

Senate Bill 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ashley Lyerly

Phone 205-968-2266

Address P.O. Box 43263
Street

Email ashley.lyerly@lung.org

Birmingham AL 35243
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:
American Lung Association

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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February 15, 2022
Meeting Date

Rules
Committee

224 - Regulation of Smoking
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jonathan Webber

Phone 954-593-4449

Address 1700 N. Monroe St. #11-286
Street

Email jwebber@fcvoters.org

Tallahassee FL 32303
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Conservation Voters

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Feb. 15, 2022
Meeting Date

Rules
Committee

224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kyle Shephard

Phone (407) 579-5952

Address 400 S. Orange Ave.
Street

Email kyle.shephard@orlando.gov

Orlando FL 32801
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
City of Orlando

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules
Committee

SB 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name TRISH NEELY

Phone 850 322 3317

Address 2024 SHANGRI LA LANE
Street

Email

TALLY FL 32303
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

LEAGUE WOMEN VOTERS FLORIDA

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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02/15/2022
Meeting Date

Rules
Committee

SB 0224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ivonne Fernandez - AARP

Phone 954 850 7262

Address 215 S Monroe Suite 603
Street

Email ifernandez@aarp.org

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:
AARP

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/22
Meeting Date

Rules
Committee

SB 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Robert Lewis / SARASOTA COUNTY Phone 941 444 9532

Address 1660 Ringling Blvd Email rlewis@scgov.net
Street

SARASOTA FL 34236
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:
SARASOTA COUNTY

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/22
Meeting Date

RULES
Committee

0824
Bill Number or Topic

Amendment Barcode (if applicable)

Name PAT GERARD

Phone 727-422-3912

Address 2308 SETON LANE
Street

Email PGERARD@PINELLASCOUNTY.ORG

LARGO FL 33774
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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02/15/2022
Meeting Date

Rules
Committee

SB0224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Eric Gerard

Phone 727-580-9146

Address 2308 Seton Lane
Street

Email egerard@largo.com

Largo FL 33774
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/2022
Meeting Date

S Rules
Committee

SB 224
Bill Number or Topic

N/A
Amendment Barcode (if applicable)

Name Bob McKee

Phone 8507661952

Address 100 S Monroe St
Street

Email Bmckee@flcounties.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Assn. of Counties

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/2022 10:00
Meeting Date

Rules
Committee

224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Dannie McMillon

Phone 407-855-7604

Address 1247 ORLANDO CENTRAL PKWY
Street

Email legislation@floridapta.org

ORLANDO FL 32809
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/2022
Meeting Date

Rules
Committee

224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Rana Brown

Phone 3059351866

Address 18851 NE 29 Ave Ste. 1010
Street

Email rana@rlbookpa.com

Aventura FL 33180
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
City of Fort Lauderdale

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules 10am 412 KB
Committee

224
Bill Number or Topic

Amendment Barcode (if applicable)

Name DAVID CULLEN

Phone 941-323-2404

Address 9830 ELM ST
Street

Email cullenasea@gmail.com

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:

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 442
INTRODUCER:	Senator Rodriguez
SUBJECT:	Powers of Land Authorities
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Rogers	EN	**Favorable**
2.	Hackett	Ryon	CA	**Favorable**
3.	Collazo	Phelps	RC	**Favorable**

I. Summary:

SB 442 authorizes land authorities to assist the counties within which they are located in the administration of state and federal grants awarded to those counties for residential flood and sea-level rise mitigation projects. These projects include grants for the elevation of structures above minimum flood elevations, the demolition and reconstruction of structures above minimum flood elevations, and the acquisition of land with structures at risk of flooding.

The bill is effective July 1, 2022.

II. Present Situation:

Land Authorities

Sections 380.0661-380.0685, F.S. (Act), authorize certain counties – specifically, counties in which one or more designated areas of critical state concern[1] are located[2] – to create land authorities by ordinance[3] to "equitably deal with the challenges of implementing comprehensive land use plans developed pursuant to the area of critical state concern program, which challenges are often complicated by the environmental sensitivity of such areas."[4]

[1] The Areas of Critical State Concern Program, which was created by the Florida Environmental Land and Water Management Act of 1972, is intended to "protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources." Fla. Dep't of Economic Opportunity, *Areas of Critical State Concern Program*, https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern (last visited Nov. 3, 2021).
[2] The following areas have been designated as areas of critical state concern: Big Cypress Area (portions of Collier, Miami-Dade, and Monroe counties); Green Swamp Area (portions of Polk and Lake counties); City of Key West and the Florida Keys Areas (Monroe County); and the Apalachicola Bay Area (Franklin County). *Id.*
[3] Section 380.0663(1), F.S.
[4] Section 380.0661(1), F.S.

Land authorities are intended to be both corporate and political public bodies having stable funding and the flexibility to address plan implementation innovatively and by acting as intermediaries between individual landowners and the governmental entities regulating land use.[5] The governing body of the land authority is the governing board of the county.[6]

Land authorities act as intermediaries between landowners and government agencies that regulate land use; their core mission is to acquire property for conservation use. Land authorities also provide funding for affordable housing projects, protect conserved land from private acquisition and use, and maintain conservation land stewardship programs.

Land authorities are funded through two primary sources: a surcharge on admission and overnight occupancy at state parks,[7] and a share of locally imposed tourist taxes on goods such as lodging.[8] In order to raise additional funds to purchase lands or afford other approved purposes, a land authority may also issue revenue bonds.

Land authorities' powers are statutorily enumerated and include, among other powers, the powers to sue and be sued; to make and execute contracts and other instruments; to commission studies and analyses of county land planning needs within areas of critical state concern; to acquire and dispose of real and personal property under specified conditions; to contribute tourist impact tax revenues pursuant to s. 125.0108, F.S., to certain authorized government and state agency recipients for specified purposes under certain conditions; to borrow money through the issuance of bonds and to buy, hold, cancel, or resell such bonds; and to do any and all things otherwise necessary or convenient to carry out the purposes of the Act.[9]

The Monroe County Land Authority

The Monroe County Comprehensive Plan Land Authority, known as the Monroe County Land Authority (Authority), has a core mission to acquire property for conservation use. The Authority also provides funding for affordable housing projects, prevents or satisfies private property acquisition, and maintains the conservation land stewardship program in Monroe County within the Florida Keys and Key West Areas of Critical State Concern.[10]

The Authority was established to assist in the implementation of land use plans and to serve as an intermediary between landowners and government agencies that regulate land use. The Authority is a component of Monroe County government created in 1986 and governed by the Board of County Commissioners (BOCC).[11]

[5] Sections 380.0661(2); 380.0663(1), F.S.
[6] Section 380.0663(1), F.S.
[7] Section 380.0685, F.S.
[8] Section 125.0108, F.S.
[9] *See generally* Section 380.0666, F.S.
[10] Monroe County, *Monroe County Land Authority*, https://www.monroecounty-fl.gov/272/Land-Authority (last visited Nov. 22, 2021).
[11] *Id.*

III. Effect of Proposed Changes:

The bill amends s. 380.0666, F.S., to authorize land authorities to assist the counties within which they are located in the administration of state and federal grants awarded to those counties for residential flood and sea-level rise mitigation projects. Such grants include grants for the elevation of structures above minimum flood elevations, the demolition and reconstruction of structures above minimum flood elevations, and the acquisition of land with structures at risk of flooding.

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:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 380.0666 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Rodriguez

39-00711-22 2022442__

A bill to be entitled

An act relating to the powers of land authorities; amending s. 380.0666, F.S.; authorizing land authorities to assist the counties in which they are located with certain activities addressing flooding and sea-level rise; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (3) of section 380.0666, Florida Statutes, to read:

380.0666 Powers of land authority.—The land authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers, which are in addition to all other powers granted by other provisions of this act:

(3)

(c) To assist the county in which it is located in the administration of state and federal grants awarded to the county for residential flood and sea-level rise mitigation projects, including grants for the elevation of structures above minimum flood elevations; the demolition and reconstruction of structures above minimum flood elevations; and the acquisition of land with structures at risk of flooding.

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

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 2, 2022

I respectfully request that SB 442 , relating to Powers of Land Authorities, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

SB 442 authorizes land authorities to assist the countries within which they are located in the administration of the state and federal grants awarded to those countries for residential flood and sea-level rise mitigation projects.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

Rules
Committee

442
Bill Number or Topic

Amendment Barcode (if applicable)

Name Lisa Tennyson for Monroe County

Phone 305-509-1709

Address 1100 Simonton
Street

Key West FL 33040
City State Zip

Email tennyson-lisa@monroecounty-fl.gov

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

Rules
Committee

SB 442
Bill Number or Topic

Amendment Barcode (if applicable)

Name TRISH NEELY

Phone 850 322 3317

Address 2024 SHANGRI LA LANE
Street

Email

TALLY FL 32303
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

LEAGUE WOMEN VOTERS FLORIDA

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

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S-001 (08/10/2021)

2/15/22
Meeting Date

Rules
Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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442
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ryan Matthews - Monroe County Phone 850 577 9090

Address 301 S. Bronough St suite 500 Email ryan.matthews@gray-robinson.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: Monroe County

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

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 514
INTRODUCER:	Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Burgess and others
SUBJECT:	Substitution of Work Experience for Postsecondary Educational Requirements
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Limones-Borja	McVaney	GO	**Fav/CS**
2.	Hackett	Ryon	CA	**Fav/CS**
3.	Limones-Borja	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 514 creates s. 112.219, F.S., to allow governmental agencies, during the employee hiring process, to substitute equivalent work experience as an alternative to a postsecondary education, if the applicant is otherwise qualified for the position. The bill specifies that work experience may not be substituted for any required licensure, certification, or registration as established by the employing agency and indicated on the position description. The bill defines employing agencies to include any agency or unit of government of the state or any county, municipality, or political subdivision. The bill requires employing agencies who opt to substitute work experience for postsecondary education, to include a notice in the advertisements for such position that substitution is authorized and a description of what education and work equivalencies apply.

The implementation of the bill does not abridge state and federal laws and regulations governing equal opportunity.

The bill is not expected to impact state or local government revenues and expenditures.

The bill takes effect July 1, 2022.

II. Present Situation:

State Employment Policy

According to the employment policy of the state, conditions of employment in state government must be made without regard to age, sex, color, religion, national origin, political affiliation, marital status, or disability.[1] The state and its political subdivisions must comply with the Americans with Disabilities Act,[2] Equal Employment Opportunity Act,[3] Florida Civil Rights Act,[4] and Fair Labor Standards Act.[5] In addition, the state and its political subdivisions must give preference to veterans for positions of employment.[6]

State Hiring Process

The State's employment process is decentralized with each state agency being responsible for its recruitment, selection, and hiring decisions.[7] Selection of candidates for employment is based on an assessment of the specific knowledge, skills, and abilities necessary for the successful performance of the position's duties.[8] After assembling a pool of candidates, an agency's hiring official compares candidates' education, experience, and any necessary license or certification requirements.[9] Candidates who appear to possess the required knowledge, skills, abilities, licensure and certifications will proceed further in the selection process.[10] The hiring official then determines the candidates who will be asked to participate in additional selection procedures, such as oral interviews or work sample exercises.[11] The job-related information gained during the selection process assists the hiring official in making the final selection decision. The final selection decision is the sole responsibility of the employing agency.[12] Agencies are required to document the qualifications of the selected candidate to ensure the candidate meets the minimum requirements specified by the employing agency, any licensure or certification requirements, and possess the requisites for the position.[13]

Section 110.201 F.S., authorizes the Department of Management Services (DMS), in consultation with agencies, to create rules relating to employees and positions in the Career

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[1] Section 110.105(2)(a), F.S.
[2] U.S. Department of Labor, *Employers' Responsibilities, Americans with Disabilities Act*, https://www.dol.gov/general/topic/disability/employersresponsibilities (last visited Jan. 28, 2022).
[3] U.S. Equal Employment Opportunity Commission, *Overview*, https://www.eeoc.gov/overview#:~:text=The%20U.S.%20Equal%20Employment%20Opportunity,national%20origin%2C%20age%2%200(40%20or (last visited Jan. 28, 2022).
[4] Section 760.02(7), F.S.
[5] U.S. Department of Labor, *Wages and the Fair Labor Standards Act*, https://www.dol.gov/agencies/whd/flsa (last visited Jan. 28, 2022).
[6] Section 296.07, F.S.
[7] Job Candidate Program Manual, Division of Human Resource Management, Department of Management Services, *available at* https://www.dms.myflorida.com/content/download/99277/573474/Job_Candidate_Program_Manua l_Final_3-21-17.pdf (last visited January 19, 2022).
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Section 110.211(1), F.S.
[13] Section 110.213(2), F.S.

Service.[14] The statute allows the DMS to adopt rules providing alternative requirements. Section 110.2035, F.S., requires employing agencies to maintain, on a current basis, a position description of each authorized and established position within the agency. The position description shall include a description of the assigned duties and responsibilities, along with any other pertinent information concerning the position.[15] The position description shall serve as a record of the official assignment of duties to the position.[16]

The DMS has established rules[17] providing agencies with discretion to establish the duties for any given position, which includes:

- An accurate description of the duties and responsibilities assigned to the position;
- The job related knowledge, skills, and abilities;
- Any licensure, certification, or registration; and
- Any position designators.[18]

County and Municipal Powers

Section 125.74, F.S., of the County Administration Law of 1974, enumerates specific powers and duties which the county administrator possesses, including the power to recommend to the board of county commissioners (Board) position classifications and pay plans for all positions in county service. The county administrator is also responsible for selecting, employing, and supervising all personnel, and filling all vacancies, positions, or employment under the jurisdiction of the Board, although the employment of department heads requires confirmation by the Board.[19]

Section 166.021, F.S., of Florida's Municipal Home Rule Powers Act, contains general provisions governing the exercise of municipal powers under the framework established in article VIII, section 2(b) of the State Constitution. Section 166.021(1), F.S., grants municipalities the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services. The statute grants municipalities the ability to exercise any power for municipal purposes, except when expressly prohibited by law.[20]

Authority of Special Districts

A "special district" is a unit of local government created for a special purpose operating within a limited geographic boundary.[21] Special districts are created by general law, special act, local ordinance, or administrative rule of the Governor and Cabinet.[22] Special districts are created to

[14] The Career Service system provides uniform pay, job classifications, benefits and recruitment for the majority of non-management jobs within state agencies.
[15] Section 110.2035(5)(a), F.S.
[16] *Id.*
[17] Rule 60L-31.003, F.A.C.
[18] Rule 60L-31.003(1), F.A.C.
[19] Section 125.74(k), F.S.
[20] Section 166.021(a), F.S.
[21] Section 189.012(6), F.S.
[22] *Id.*

provide a wide variety of services, such as mosquito control,[23] children's services,[24] fire control and rescue,[25] and drainage and water control.[26]

Special districts cooperate and coordinate their activities within the units of general-purpose local government in which they are located.[27] Chapter 189, F.S., does not provide special districts the authority to employ people or the ability to set out any requirements regarding education or work experience.

III. Effect of Proposed Changes:

Section 1 creates s. 112.219, F.S., to authorize a head of an employing agency to substitute equivalent work experience in lieu of a postsecondary education, beginning July 1, 2022. Work experience may not be substituted for any required licensure, certification, or registration as established by the agency and indicated on the position description. The section requires any employing agency that elects to substitute work experience for post-secondary education to include a notice in the job advertisement that substitution is authorized and a description of what education and work experience equivalencies apply. This section does not abridge state and federal laws and regulations governing equal opportunity employment.

This section defines the term "employing agency" to mean any agency or unit of government of the state or any county, municipality, or political subdivision thereof, including special districts, authorized to employ personnel to carry out the responsibilities of the agency or unit of government.

Section 2 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

None.

C. Trust Funds Restrictions:

None.

[23] Section 388.021(1), F.S.
[24] Section 125.901(1), F.S
[25] Section 191.002, F.S.
[26] Section 298.01, F.S
[27] Section 189.011(3), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is no fiscal impact to the government sector because the bill codifies current practice.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.219 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on February 8, 2022:
The CS amends a typographical error in the title.

CS by Governmental Oversight and Accountability on February 2, 2022:
The CS:

- Defines the term "employing agency" to mean any agency or unit of government of the state or any county, municipality, or political subdivision thereof, including special districts, authorized to employ personnel to carry out the responsibilities of the agency or unit of government.

- Reorganizes the substantive provisions of the bill into Chapter 112, instead of creating multiple new sections within the distinct chapters.

B. Amendments:

None.

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

By the Committees on Community Affairs; and Governmental Oversight and Accountability; and Senators Burgess and Perry

578-02847-22 2022514c2

A bill to be entitled

An act relating to substitution of work experience for postsecondary educational requirements; creating s. 112.219, F.S.; authorizing the head of an employing agency, beginning on a specified date, to elect to substitute certain work experience for postsecondary educational requirements under certain circumstances; prohibiting the substitution of certain work experience for postsecondary educational requirements; providing advertising requirements relating to positions of employment; providing for construction; defining the term "employing agency"; providing an effective date.

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

Section 1. Section 112.219, Florida Statutes, is created to read:

112.219 Substitution of work experience for postsecondary educational requirements.—

(1) Beginning July 1, 2022, the head of an employing agency may elect to substitute verifiable, related work experience in lieu of postsecondary educational requirements for a position of employment if the person seeking the position of employment is otherwise qualified for such position.

(2) Related work experience may not substitute for any required licensure, certification, or registration required for the position of employment as established by the employing agency and indicated in the advertised description of the

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

578-02847-22 2022514c2

position of employment.

(3) If the head of an employing agency elects to substitute related work experience for postsecondary educational requirements, the employing agency must include, in all advertisements for the position of employment made by the employing agency, a notice that such substitution is authorized and a description of the related work experience equivalencies that may be substituted for the required postsecondary education.

(4) This section does not abridge state and federal laws and regulations governing equal opportunity employment.

(5) For purposes of this section, the term "employing agency" means any agency or unit of government of the state or any county, municipality, or political subdivision thereof, including special districts, that is authorized to employ personnel to carry out the responsibilities of the agency or unit of government.

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

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

2-15-2022
Meeting Date

Rules
Committee

The Florida Senate
APPEARANCE RECORD

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SB 514
Bill Number or Topic

Amendment Barcode (if applicable)

Name DURELL TOOTLE

Phone 407-532-9076

Address 2250 LEE RD
Street

WINTER PARK FL 32789
City State Zip

Email DURELLTOOTLE@gmail.

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

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2-15-22
Meeting Date

Rules
Committee

SB 514
Bill Number or Topic

Amendment Barcode (if applicable)

Name Henry J Muñoz

Phone 352 566 8617

Address 495 Marion Oaks Blvd
Street

Email sthjms@gmail.com

Ocala FL 34473
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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2-15-22
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SB 5141
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Cheryl Chapleau

Phone 352-207-7809

Address 13607 SW 33rd cir
Street

Email itsyourteapartyflorida@gmail.com

Ocala FL 34473
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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2-15-22
Meeting Date

Rules
Committee

SB 514
Bill Number or Topic

Amendment Barcode (if applicable)

Name Douglas Cannatella

Phone 352-877-3220

Address 9315 SW 97th LN
Street

Email notch167@gmail.com

Ocala FL 34481
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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02-15-22
Meeting Date

SB 514
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Justin Chapleau

Phone 352-895-4329

Address 13607 SW 33rd. Cir.
Street

Email dkorigalt@gmail.com

Ocala FL. 34473
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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The Florida Senate

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2/15/22
Meeting Date

SB 514
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Luz M. Robles

Phone (352) 216-6716

Address 495 Marion Oaks Blvd
Street

Email stlmbs@gmail.com

Ocala FL 34473
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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2/15/22
Meeting Date

Rules
Committee

SB514
Bill Number or Topic

Amendment Barcode (if applicable)

Name Catherine Fucini

Phone 352-877-3220

Address 9315 SW 97th ln. Unit D
Street

Email catherineone01@yahoo.com

Ocala FL 34481
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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2/15/22
Meeting Date

Rules
Committee

SB 514
Bill Number or Topic

Amendment Barcode (if applicable)

Name Dayna Gaut

Phone 321-354-5265

Address 11667 Acosta Ave
Street

Email dayna@daynagaut.com

Orlando FL 32836
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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02/15/22
Meeting Date

Rules
Committee

SB 514
Bill Number or Topic

Amendment Barcode (if applicable)

Name Robert Schmidt

Phone 860 367 7320

Address 11488 SW 82nd CT RD
Street

Email rdsbobby@aol.com

Ocala FL 34481
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules
Committee

SB 514
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barbara Schmidt

Phone 860-367-7319

Address 11488 SW 82nd CT Rd
Street

Email barb1257@aol.com

Ocala FL 34481
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/
Meeting Date

Rules
Committee

514
Bill Number or Topic

Amendment Barcode (if applicable)

Name Melissa Ramba

Phone 850-570-0269

Address 108 S. Monroe St.
Street

Email Melissa@flapartners.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Opportunity Solutions

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

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

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S-001 (08/10/2021)

The Florida Senate

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Deliver both copies of this form to
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02/15/2022
Meeting Date

Senate rules Committee
Committee

SB 514
Bill Number or Topic

Amendment Barcode (if applicable)

Name DAVID J Meltzer

Phone 407.714.3746

Address 1345 Dunhill Dr.
Street

Email djmeltzer@reagan.com

Longwood FL 32750
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/24
Meeting Date

SB 514
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name VICENTE, RAFAEL PEREZ-CARRENO Phone 407-953-7883

Address 3956 TOWN CTR. BLVD. #207 Email VRPC2000@HOTMAIL.COM
Street

ORLANDO FL 32837
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/22
Meeting Date

Rules
Committee

SB 514
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shan Goff

Phone 850-544-6128

Address 250 S. Monroe St
Street

Email shan@excelined.org

Tall 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: Foundation for Florida's Future

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

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

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

This information was not read into the record by the Chair

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/CS/SB 590
INTRODUCER:	Rules Committee; Governmental Oversight and Accountability Committee; and Senator Rodriguez
SUBJECT:	Public Records and Meetings/Professional Counselors Licensure Compact
DATE:	February 16, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Favorable**
2.	Ponder	McVaney	GO	**Fav/CS**
3.	Smith	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 590 exempts from public inspection and copying requirements the personal identifying information of a mental health counselor, other than the counselor's name, licensure status, or licensure number, obtained from the data system under the Professional Counselors Licensure Compact, as established in s. 491.017, F.S.,[1] and held by the Department of Health (DOH) or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board). This information is not exempt from public records requirements under the bill if the state originally reporting the information to the data system authorizes disclosure of such information by law.

The bill exempts from open meeting requirements a closed meeting or a closed portion of a meeting of the Compact Commission or the executive committee of the commission, established under the Professional Counselors Licensure Compact. The exemption applies when the chair of the commission declares the specific reasons it is necessary to close the meeting or a portion thereof in a document that is a public record and held by the commission and announces at a public meeting that, in connection with the performance of the commission's duties, it is necessary that the commission discuss one of five enumerated issues. The bill provides that

[1] Section 491.017, F.S., is created in SB 358 (2022) and authorizes the state's participation in the Professional Counselors Licensure Compact and the coordinated information system.

recordings, minutes, and records generated from those closed meetings are also exempt from requirements to disclose such public records.

The bill has no impact on state revenues or state expenditures.

The bill provides an effective date of the same date that SB 358 or similar legislation takes effect. SB 358, the substantive bill authorizing Florida's participation in the Professional Counselors Licensure Compact, has an effective date contingent upon the enactment of the compact into law by 10 states.

The bill provides for the repeal of the public records and open meeting exemptions on October 2, 2027, unless reviewed and reenacted by the Legislature. It also provides statements of public necessity for the public records and public meetings exemptions as required by the State Constitution.

The bill creates new public records exemptions and public meeting exemptions; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is required for final passage.

II. Present Situation:

Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[2] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[3]

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 adopted in the rules of each house of the legislature.[4] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[5] Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

[2] FLA. CONST. art. I, s. 24(a).
[3] *Id*.
[4] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)
[5] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

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.[6]

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 connections 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."[7]

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.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

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.[10] 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.[11]

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[6] 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."

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

[8] Section 119.07(1)(a), F.S.

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

[10] FLA. CONST. art. I, s. 24(c).

[11] *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).

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

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*.[14] 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.[15] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[16]

Open Meetings Laws

The State Constitution provides that the public has a right to access governmental meetings.[17] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[18] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.[19]

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law,"[20] or the "Sunshine Law,"[21] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[22] The board or commission must provide the public reasonable notice of such meetings.[23] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[24] Minutes of a public meeting must be promptly recorded and open to public inspection.[25] Failure to abide by open meetings requirements will invalidate any resolution, rule

[12] *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).
[13] *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).
[14] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[15] *Id*.
[16] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[17] FLA. CONST., art. I, s. 24(b).
[18] *Id*.
[19] FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."
[20] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).
[21] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).
[22] Section 286.011(1)-(2), F.S.
[23] *Id*.
[24] Section 286.011(6), F.S.
[25] Section 286.011(2), F.S.

or formal action adopted at a meeting.[26] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[27]

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.[28] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[29] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[30]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[31] (the Act), prescribe a legislative review process for newly created or substantially amended[32] public records or open meetings exemptions, with specified exceptions.[33] 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.[34]

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.[35] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the 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;[36]
- 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;[37] or

[26] Section 286.011(1), F.S.
[27] Section 286.011(3), F.S.
[28] FLA. CONST., art. I, s. 24(c).
[29] *Id*.
[30] *Halifax Hosp. Medical Center v. New-Journal Corp.,* 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.
[31] Section 119.15, F.S.
[32] 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.
[33] 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.
[34] Section 119.15(3), F.S.
[35] Section 119.15(6)(b), F.S.
[36] Section 119.15(6)(b)1., F.S.
[37] Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.[38]

The Act also requires specified questions to be considered during the review process.[39] 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.[40] 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.[41]

Professional Counselors Licensure Compact

The Professional Counselors Licensure Compact (compact) provides a pathway for a licensed professional counselor who is licensed in his or her primary state of residence (the licensee's "home state") the ability to apply and be granted a privilege to practice professional counseling (equivalent to a license to practice) in another member state, both in-person and through telehealth.

The compact will become effective after 10 states enact the legislation for the compact. The counseling compact has passed and been signed into law in two states. On May 10, 2021, Georgia Governor Brian Kemp signed HB 395 and subsequently on May 18, 2021, Maryland Gov. Larry Hogan signed SB 571/HB 736.[42] The compact has also been introduced this year in Tennessee (SB 1027 HB 0959), Nebraska (LB 554), Ohio (SB 204), and North Carolina (HB 791).[43]

Data System

Article X of the compact creates a shared interstate database and reporting system (the data system) containing licensure, adverse action, and investigative information on all licensed professional counselors in member states.

[38] Section 119.15(6)(b)3., F.S.
[39] 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?

[40] *See generally* s. 119.15, F.S.
[41] Section 119.15(7), F.S.
[42] Counseling Compact, *News*, *available at* https://counselingcompact.org/news/ (last visited January 5, 2022).
[43] Counseling Compact, *Maps*, *available at* https://counselingcompact.org/map/ (last visited January 5, 2022).

Pursuant to Section 2 of Article X of the compact, and notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all licensees to whom the compact is applicable, as required by the rules of the commission, including all of the following:

- Identifying information.
- Licensure data.
- Adverse actions against a license or privilege to practice.
- Nonconfidential information related to alternative program participation.
- Any denial of application for licensure and the reason for such denial.
- Current significant investigative information.
- Other information that may facilitate the administration of the compact, as determined by the rules of the commission.

Investigative information pertaining to a licensee in any member state may be made available only to other member states. The commission must promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license.

Member states reporting information to the data system may designate information that may not be shared with the public without the express permission of the reporting state.

Counseling Compact Commission

The Counseling Compact Commission (commission) is created in Article IX of the compact and serves as the administrative arm of the Compact and the member states. Each member state is entitled to one delegate appointed by each member state's licensing board who must be either a licensed professional counselor, a public member, or an administrator of the board. Each delegate has one vote on commission affairs.

The commission meets at least once per calendar year in a publicly noticed meeting. The compact gives the commission the authority to establish and elect an Executive Committee that may act on behalf of the commission, with the exception of rulemaking. The commission may also establish additional committees as necessary.

Under Section 3 of Article IX of the compact, the commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission must discuss any of the following:

- Noncompliance of a member state with its obligations under the compact.
- The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures.
- Current, threatened, or reasonably anticipated litigation.
- Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate.
- Accusing any person of a crime or formally censuring any person.
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential.

- Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Disclosure of investigative records compiled for law enforcement purposes.
- Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact.
- Matters specifically exempted from disclosure by federal or member state law.

If a meeting, or portion of a meeting, is closed, the commission's legal counsel or designee must certify that the meeting may be closed and must reference each relevant exempting provision.

The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

III. Effect of Proposed Changes:

Section 1 creates s. 491.018, F.S., to exempt from public inspection and copying requirements a mental health counselor's personal identifying information, other than the counselor's name, licensure status, or licensure number, obtained from the data system under the Professional Counselors Licensure Compact, as established in s. 491.017, F.S., and held by the DOH or the Board. This information is not exempt from public records requirements under the bill if the state originally reporting the information to the data system authorizes disclosure of such information by law.

The bill also exempts from open meeting requirements a closed meeting or any closed portion of a meeting of the commission or the executive committee of the commission. The exemption applies when the chair of the commission declares the specific reasons it is necessary to close the meeting or a portion thereof in a document that is a public record and held by the commission and announces at a public meeting that, in connection with the performance of the commission's duties, it is necessary that the commission discuss:

- Pending litigation to which the commission is presently a party before a court or administrative agency in accordance with s. 286.011(8).
- Negotiation of contracts under competitive solicitation as provided in s. 286.0113(2).
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential.
- Records made exempt under this section.
- Matters specifically exempted from disclosure by federal or member state law.

The bill further exempts from public inspection and copying requirements the recordings, minutes, and records generated from closed meetings.

These exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides, as required by the State Constitution, a statement of public necessity which provides that protection of the specified information is required under the compact which the state must adopt in order to become a member state and a party to the compact. Without the public records exemption, the state would be unable to effectively and efficiently function as a member of the compact.

Additionally, this section provides a statement of public necessity, as required by the State Constitution, for protecting any closed meeting or any closed portion of a meeting of the commission or the executive committee or other committees of the commission when the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee or other committees of the commission must discuss specified issues listed in the compact. These meetings or portions of meetings would be exempted from s. 286.011, F.S., and s. 24(b), Art. I. of the State Constitution. Without the public meeting exemption, the state will be prohibited from becoming a party to the Compact.

This section includes a statement of public necessity that the recordings, minutes, and records generated during an exempt meeting of the commission are exempt pursuant to s. 464.0096, F.S., and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Release of such information would negate the public meeting exemption.

Section 3 provides an effective date of the same date that SB 358 or similar legislation takes effect. SB 358, the substantive bill authorizing Florida's participation in the Professional Counselors Licensure Compact, has an effective date contingent upon the enactment of the compact into law by 10 states.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities 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, section 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 or open meetings requirements. This bill creates public records exemptions and a public meeting exemption; therefore, it requires a two-thirds vote.

Public Necessity Statement

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

The public necessity statement for the public records exemption of certain personal identifying information states that:

> Protection of such information is required under the Professional Counselors Licensure compact, which the state must adopt in order to become a member state of the compact. Without the public records exemption, this state will be unable to effectively and efficiently implement and administer the compact.

Thus, the specific justification for denying public access to a counselor's personal identifying information (as specified in this bill) is to become an effective member state of the compact. However, it is unclear from the statement what the public purpose or "public necessity" for such membership would be. Thus, the public necessity statement appears insufficiently specific to justify the exemption.[44]

The public necessity statement justifies the closure of a meeting or portion thereof for the discussion of "certain sensitive and confidential subject matters." The bill contains five distinct "sensitive and confidential" matters. The public necessity statement does not appear specific enough to support the five diverse subject matters covered by the exemption.

Breadth of Exemption

Article I, section 24(c), of the State Constitution requires exemptions to the public records and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for personal identifying information, other than the counselor's name, licensure status, or licensure number, which does not appear – subject to the concerns raised above - to be broader than necessary to accomplish its purpose as outlined in the public necessity statement.

The bill provides that a meeting or a portion of a meeting of the commission or the executive committee of the commission is exempt if the chair of the commission declares the specific reasons it is necessary to close the meeting or a portion thereof in a document that is a public record and held by the commission and announces at a public meeting that, in connection with the performance of the commission's duties, it is necessary that the commission discuss:

[44] *Cf. Bryan v. State*, 753 So.2d 1244, 1251 (Fla. 2000) (finding public necessity statement supporting exemption for records identifying individuals involved in death penalty executions was sufficiently specific where the Legislature detailed that disclosure of this information would jeopardize the individual's safety and welfare by exposing them to potential harassment, intimidation, and harm).

- Pending litigation to which the commission is presently a party before a court or administrative agency in accordance with s. 286.011(8).
- Negotiation of contracts under competitive solicitation as provided in s. 286.0113(2).
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential.
- Records made exempt under this section.
- Matters specifically exempted from disclosure by federal or member state law.

As stated above, the public necessity statement provides only that a meeting may be closed for discussion of "certain sensitive and confidential subject matters." The five enumerated exemptions carve out more territory than the currently drafted public necessity statement can support. Thus, the public meetings exemption appears to be broader than necessary to achieve the current stated purpose.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, a meeting of the commission or the executive committee of the commission may be closed if the chair of the commission declares the specific reasons it is necessary to close the

meeting or a portion thereof in a document that is a public record and held by the commission and announces at a public meeting that, in connection with the performance of the commission's duties, it is necessary that the commission discuss any of the five enumerated exempt provisions. However, SB 358, to which this bill is linked, contains (i) a different process for the closing of an otherwise public meeting; and (ii) different exempt provisions upon which a meeting may be closed. SB 358 authorizes the commission or executive committee or other committees of the commission to convene in a closed, nonpublic meeting *if the commission or executive committee or other committees of the commission must discuss* any of the ten enumerated exemption provisions. It then provides that *if a meeting, or a portion of a meeting, is closed,* that the commission's legal counsel or designee must certify that the meeting may be closed and reference each relevant exemption provision. The ten exempt provisions[45] in SB 358 are overbroad, appear contrary to state law, or conflict with the exempt provisions under this bill. An amendment should be considered to align the processes for closing a meeting and the exempt meeting provisions in these two linked bills.

VIII. Statutes Affected:

This bill creates section 491.018 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 15, 2022:
The CS/CS conforms the statement of public necessity to changes made to the public meetings exemption in the Committee on Governmental Oversight and Accountability.

CS by Governmental Oversight and Accountability on January 13, 2022:
The CS:

- Revises the exemption to open meetings in SB 590 to conform to constitutional and statutory requirements.
- Permits the commission to close a meeting by call of the chair, rather than by certification of the commission's legal counsel or designee.
    - Specifically, the amendment permits the commission to close a meeting or portion thereof if the chair declares the specific reasons it is necessary to close the

[45] The ten exemptions include discussion of any of the following: (1) Noncompliance of a member state with its obligations under the compact; (2) The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures; (3) Current, threatened, or reasonably anticipated litigation; (4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate; (5) Accusing any person of a crime or formally censuring any person; (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential; (7) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy; (8) Disclosure of investigative records compiled for law enforcement purposes; (9) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; and (10) Matters specifically exempted from disclosure by federal or member state law.

meeting in a document that is a public record and held by the commission and announces at a public meeting that, in connection with the performance of the commission's duties, it is necessary that the commission discuss certain enumerated topics.

- Removes the term "other committees" to permit only the Counseling Compact Commission and the executive committee of the commission – both defined entities within the Compact's substantive bill - as having the authority to hold a closed meeting.
- Removes five of the ten enumerated bases that trigger a closed meeting that are overbroad or otherwise conflict with state law.
- Revises the remaining bases to permit closure of a meeting when the commission will discuss:
  - Pending litigation.
  - Negotiation of contracts under competitive solicitation.
  - Disclosure of trade secrets.
  - The personal identifying information made exempt under subsection (1) of this bill.
  - Matters specifically exempted from disclosure by federal or member state law.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
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	.	
	.	

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment

Delete lines 83 - 95
and insert:
executive committee of the commission held as provided in article IX of s. 491.017, Florida Statutes, in which matters specifically exempted from disclosure by federal or state law are discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution.

(b) The Professional Counselors Licensure Compact requires the closure of any meeting, or any portion of a meeting, of the


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Counseling Compact Commission or the executive committee of the commission if the chair of the commission declares the specific reasons it is necessary to close the meeting or a portion thereof in a document that is a public record and held by the commission and announces in a public meeting that, in connection with the performance of the commission's duties, the commission must discuss certain sensitive and

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

585-01997-22 2022590c1

A bill to be entitled

An act relating to public records and meetings; creating s. 491.018, F.S.; providing an exemption from public records requirements for certain information held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling pursuant to the Professional Counselors Licensure Compact; authorizing the disclosure of such information under certain circumstances; providing an exemption from public meetings requirements for certain meetings or portions of certain meetings of the Counseling Compact Commission or its executive committee; providing an exemption from public records requirements for recordings, minutes, and records generated during the closed portions of such meetings; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Section 491.018, Florida Statutes, is created to read:

491.018 Professional Counselors Licensure Compact; public records and meetings exemptions.—

(1) A counselor's personal identifying information, other than the counselor's name, licensure status, or licensure number, obtained from the data system, as described in article X

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

585-01997-22 2022590c1

of s. 491.017, and held by the department or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless the state that originally reported the information to the data system authorizes the disclosure of such information by law. If disclosure is so authorized, information may be disclosed only to the extent authorized by law by the reporting state.

(2)(a) A meeting or a portion of a meeting of the Counseling Compact Commission, established in article IX of s. 491.017, or the executive committee of the commission is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution if the chair of the commission declares the specific reasons it is necessary to close the meeting or a portion thereof in a document that is a public record and held by the commission and announces at a public meeting that, in connection with the performance of the commission's duties, it is necessary that the commission discuss:

1. Pending litigation to which the commission is presently a party before a court or administrative agency in accordance with s. 286.011(8).

2. Negotiation of contracts under competitive solicitation as provided in s. 286.0113(2).

3. Disclosure of trade secrets or commercial or financial information that is privileged or confidential.

4. Records made exempt under this section.

5. Matters specifically exempted from disclosure by federal or member state law.

(b) In keeping with the intent of the Professional

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

Counselors Licensure Compact, recordings, minutes, and records generated during an exempt meeting or portion of such a meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) This section 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. (1) The Legislature finds that it is a public necessity that a counselor's personal identifying information, other than the counselor's name, licensure status, or licensure number, obtained from the data system, as described in article X of s. 491.017, Florida Statutes, and held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Protection of such information is required under the Professional Counselors Licensure Compact, which the state must adopt in order to become a member state of the compact. Without the public records exemption, this state will be unable to effectively and efficiently implement and administer the compact.

(2)(a) The Legislature finds that it is a public necessity that any meeting of the Counseling Compact Commission or the executive committee or other committees of the commission held as provided in article IX of s. 491.017, Florida Statutes, in which matters specifically exempted from disclosure by federal or state law are discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State

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

Constitution.

(b) The Professional Counselors Licensure Compact requires the closure of any meeting, or any portion of a meeting, of the Counseling Compact Commission or the executive committee or other committees of the commission if the commission's legal counsel or designee has certified that the meeting may be closed because the commission or executive committee or other committees of the commission must discuss certain sensitive and confidential subject matters. In the absence of a public meeting exemption, this state would be prohibited from becoming a member state of the compact.

(3) The Legislature also finds that it is a public necessity that the recordings, minutes, and records generated during a meeting that is exempt pursuant to article IX of s. 491.017, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Release of such information would negate the public meetings exemption. As such, the Legislature finds that the public records exemption is a public necessity.

Section 3. This act shall take effect on the same date that SB 358 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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 18, 2022

I respectfully request that **CS/SB #590**, relating to Public Records and Meetings/Professional Counselors Licensure Compact, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

CS/SB 590 is a companion public records bill necessary to enact the Counseling Compact proposed in CS/SB 358 Professional Counselors Licensure Compact.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 654
INTRODUCER:	Rules Committee; Judiciary Committee; Senator Cruz, and others
SUBJECT:	Protective Injunctions
DATE:	February 15, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	**Fav/CS**
2.	Moody	Cox	CF	**Favorable**
3.	Ravelo	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 654 requires clerks of court to transmit and sheriffs to accept electronic copies of documents relating to proceedings for an injunction for protection against domestic violence and similar injunction proceedings if the respondent resides or can be found in a county other than the county in which the petition is filed. However, the sheriff has discretion to accept documents transmitted electronically if the respondent resides in the county where the petition was filed. The bill requires the Florida Sheriffs Association and the Court Clerks and Comptrollers to establish a joint workgroup to coordinate these new procedures for the electronic transmission of documents.

The bill does not change the requirements of existing law that the clerk forward the documents, including injunctions for protection against domestic violence and similar injunctions, to the sheriff within 24 hours after issuance. These documents are then to be served by the sheriff on the appropriate party to the injunction proceeding as under existing law. By giving the sheriff limited discretion to accept electronic copies of domestic violence injunctions and similar injunctions, the bill will likely enable sheriffs to serve the injunctions on the respondents more quickly after the injunctions are issued by the court. The fiscal impact will vary by county depending on their existing resources and procedures. See Section V. Fiscal Impact Statement.

The bill takes effect January 1, 2023.

II. Present Situation:

Clerks of the Court

The Clerk of the Circuit Court is a constitutional officer elected within each of Florida's 67 counties. The clerk generally serves as both the clerk of the courts as well as the clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.[1] Florida law provides that the clerk of the circuit court is required to be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk. The Clerk is required to record all such instruments in one general series called 'Official Records,' which must be open to the public for the purpose of inspecting and making extracts of the instruments, under the Clerk's supervision."[2]

Injunctions for Protection

Section 741.30, F.S., authorizes a family or household member[3] who is either the victim of domestic violence[4] or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence to file in the circuit court a petition for an injunction against domestic violence.

Section 784.046, F.S., provides that:

- A petition for an injunction for protection against repeat violence may be filed in the circuit court by a person who is the victim of repeat violence[5] or the parent or legal guardian of any minor child who is living at home.
- A petition for an injunction for protection against dating violence may be filed in the circuit court by:
  - A person who is the victim of dating violence[6]and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence;
  - A person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence; or

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[1] FLA. CONST. Art. V, s. 16. The Florida Constitution specifically provides that two roles may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Additionally, there may be a clerk of the county court if authorized by general or special law.

[2] Section 28.222(1) & (2), F.S.

[3] "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. Section 741.28(3), F.S.

[4] "Domestic violence" is an 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. Section 741.28(2), F.S.

[5] "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Section 784.046(1)(b), F.S.

[6] "Dating violence" is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. This relationship is determined based on specified factors. Section 784.046(1)(d), F.S.

  - The parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child.
- A petition for an injunction for protection against sexual violence may be filed in the circuit court by a person who is the victim of sexual violence[7] or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence on his or her own behalf or on behalf of the minor child if:
  - The person has reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; or
  - The respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed.

Section 784.0485, F.S., authorizes a person who is the victim of stalking[8] or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child to file in the circuit court a petition for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking, the offense of stalking includes the offense of cyberstalking.[9]

Once an injunction is ordered by a court, clerk of the court is required to furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the law enforcement agency of the county where the respondent resides or can be found. For an injunction for protection against dating violence, the clerk must also furnish a copy of any financial affidavit, as well as any Uniform Child Custody Jurisdiction and Enforcement Act affidavit.[10] Within 24 hours after the court issues a protective injunction, the clerk of the court must forward a certified copy of the injunction for service to the law enforcement agency with jurisdiction over the residence of the petitioner. The enforcement agency must serve the respondent with these documents as soon as possible. At the law enforcement agency's request, the clerk may transmit a facsimile copy of the protection injunction that the clerk has certified.[11]

Legal Standard for a Protective Injunction

The procedures for the issuance of a protective injunction issued under s. 741.30, F.S., s. 784.046, F.S., or s. 784.0485, F.S., are similar. A person who is the victim of domestic violence

[7] "Sexual violence" means any one incident of sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

[8] The offense of stalking is committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. Section 784.048(2), F.S.

[9] "Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or 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. Section 784.048(1)(d), F.S.

[10] Section 741.30, F.S., s. 784.046, F.S., and s. 784.0458, F.S.

[11] Sections 741.30(8)(c)(1), F.S., s. 784.046(8)(c)(1), F.S., and s. 784.0458(8)(c)(1), F.S.

or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, for example, has standing to file a sworn petition for an injunction.[12] Based on this initial petition, a court may issue a *temporary* injunction ex-parte.[13] During an ex-parte proceeding, a court is generally not required to review a response from the accused and may base a temporary injunction on hearsay evidence.[14, 15] Additional evidence may be considered, however, if an accused appears at the ex-parte proceeding or has received reasonable notice of the hearing.[16] This ex-parte proceeding is often necessary because "the existence of a true emergency . . . may sometimes require immediate action that will not permit the movant to verify each allegation made."[17]

Parties to an injunction are entitled to a full hearing and a temporary injunction is effective for a maximum of 15 days.[18] A full hearing is required prior to the expiration of the temporary injunction. At the full hearing, the accused must have a reasonable opportunity to prove or disprove the allegations made in the complaint and is entitled to introduce evidence and cross exam witnesses.[19] Based upon the full hearing, a court "must consider the current allegations, the parties' behavior within the relationship, and the history of the relationship as a whole" to determine if a permanent injunction is warranted based on the petitioner's belief that he or she is in imminent danger of becoming a victim of domestic violence.[20]

III. Effect of Proposed Changes:

The bill allows the clerk of the court to transmit domestic violence related injunction documents to the sheriff in an electronic format if the respondent resides or can be found in the county where the petition is filed and the sheriff consents to receiving the documents in an electronic format. If the respondent resides or can be found outside of the county in which the petition was filed, the clerk of the court *must* electronically transmit of these documents to the sheriff where the respondent resides or can be found. The bill specifically applies to the following documents that the clerk of the court must forward to the sheriff when an injunction proceeding is initiated:

- The petition;
- Any temporary injunction issued;
- Any notice of hearing;
- Any financial affidavit; and
- Any Uniform Child Custody Jurisdiction and Enforcement Act affidavit.

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[12] Section 741.30(1)(a), F.S.
[13] Section 741.30(5)(c), F.S.
[14] *Parrish v. Price*, 71 So. 3d 132, 134 (Fla. 2d DCA 2011) (Holding that a temporary injunction may be based solely on the petition filed, even if it is almost entirely based on hearsay statements).
[15] Additionally, when a "parent files a sworn petition and has reasonable cause to believe the minor child is a victim of sexual violence by a nonparent, the sworn petition is *a presumptively sufficient* basis for an injunction." (emphasis added) *Berthiaume v. B.S. ex rel. A.K.*, 85 So. 3d 1117, 1119 (Fla. 1st DCA 2012).
[16] Section 741.30(5)(b), F.S.
[17] *Smith v. Crider*, 932 So. 2d 393, 399 n. 4 (Fla. 2d DCA 2006).
[18] A court may, however, grant a continuance for good cause as requested by either party. The temporary injunction may be extended to include the continuance. Section 741.30(5)(c), F.S.
[19] *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011) (citing *Ohrn v. Wright*, 963 So. 2d 298 (Fla. 5th DCA 2007)).
[20] *Giallanza v. Giallanza*, 787 So.2d 162, 164 (Fla. 2d DCA 2001) (citing *Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999)).

The bill deletes the provisions of current law that would allow the clerk of the court to transmit a facsimile copy of the information only upon the request of the sheriff. Additionally, the bill allows for a sheriff to authorize a law enforcement officer to provide proof of service of the injunction electronically.

The bill requires the Florida Sheriffs Association and the Court Clerks and Comptrollers to discuss and coordinate the new procedures outlined in the bill.

The bill takes effect January 1, 2023.

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:

CS/CS/SB 654 may result in indeterminate negative impact for any law enforcement agencies and clerks of court that do not currently have the resources in place to transmit and receive injunction documents in an electronic format.

The FCCC reports that technology to be able to send electronic certified copies of injunction related documents could cost up to $30,000 per office, but this cost will vary depending on each county's current resources.[21] The cost may be higher in smaller counties because of the need to purchase equipment; whereas, larger counties may be able to absorb the costs or have the necessary equipment already.[22]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Court Clerks & Comptrollers (FCCC) reports that the bill may have a significant operational impact to the Clerk of Courts, and suggests that delivery options should be expanded to include all means of expedited service.[23] The FCCC suggests that hand-delivery of the injunction and related documents may be most effective and efficient means in some instances, such as when a Clerk's office shares physical office space with a Sheriff's office.[24] The FCCC also noted that electronic delivery of an Injunctive Relief Against Sexual Violence would need to be password protected to ensure personal identifying information of the victim is confidential.[25] If the clerks and sheriff's offices do not have the required technology to certify documents electronically, the documents will need to be printed, wet ink certified, scanned and emailed.[26] Moreover, staff would need to be trained on the new technology.[27]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.30, 784.046, 784.0485.

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 15, 2022:
The underlying bill requires the clerk of the courts to electronically transmit certain domestic violence injunction documents to the local sheriff within 24 hours of a court issuing such an injunction. The CS, instead, gives discretion to the local sheriff as to whether or not to accept electronic transmission. The clerk of the court must, however, transmit these documents electronically if the respondent resides or can be found outside the jurisdiction where the petition was filed. Additionally, the CS allows for a sheriff to

[21] The FCCC, *2022 Bill Analysis*, p. 1 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "2021 FCCC Bill Analysis").
[22] *Id.* at p. 2.
[23] *Id.* at p. 1.
[24] *Id.* at p. 1-2.
[25] *2021 FCCC Bill Analysis* at p. 2
[26] *Id.*
[27] *Id.*

authorize a law enforcement officer to provide proof of service of the injunction electronically.

The CS requires the Florida Sheriffs Association and the Court Clerks and Comptrollers to discuss and coordinate the new procedures outlined in the bill.

The effective date has been changed from July 1, 2022 to January 1, 2023.

CS by Judiciary on January 31, 2022:
The CS adds a provision to state that in the event of an Internet or network outage that would delay the electronic transmission of injunction documents by more than 24 hours after the injunction is issued by a court, the clerk of the court may, instead, provide a copy of the injunction documents using facsimile, hand delivery, or certified or registered mail.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Cruz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 53 - 393
and insert:
(8)(a)1. When the court issues an injunction for protection against domestic violence, the clerk of the court shall furnish a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the



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respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If the respondent resides in the county in which the petition is filed, the clerk of the court, with the consent of the sheriff, may electronically transmit the documents to the sheriff. However, if the respondent resides or can be found outside the county in which the petition is filed, the clerk of the court must electronically transmit a certified copy of such documents to the sheriff where the respondent resides or can be found. An electronically transmitted document ~~When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction must be that has been certified by the clerk of the court, and the electronic this facsimile copy must~~ may be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court is ~~shall be~~ responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A



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law enforcement agency serving injunctions pursuant to this section must ~~shall~~ use service and verification procedures consistent with those of the sheriff.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against domestic violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. All orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1. must~~, shall~~ be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk must ~~shall~~ note on the original order that service was effected. If delivery at the hearing is not possible, the clerk must ~~shall~~ mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.


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If the respondent has been served previously with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b) ~~There shall be created~~ A Domestic and Repeat Violence Injunction Statewide Verification System is created within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout this ~~the~~ state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must ~~forward~~ a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner. The sheriff having



jurisdiction over the residence of the petitioner may authorize the law enforcement officer serving the injunction to electronically transmit the proof of service.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice must ~~shall~~ be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise

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rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(8)(a)1. When the court issues an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court shall furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If the respondent resides in the county in which the petition is filed, the clerk of the court, with the consent of the sheriff, may electronically transmit the documents to the sheriff. However, if the respondent resides or can be found outside the county in which the petition is filed, the clerk of the court must electronically transmit a certified copy of such documents to the sheriff where the respondent resides or can be found. An electronically transmitted document ~~When requested by the sheriff, the clerk of the court may transmit a facsimile copy of~~



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~~an injunction that has been certified by the clerk of the court, and this facsimile copy~~ may be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court is ~~shall be~~ responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the chief judge's jurisdiction to effect this type of service and to receive a portion of the service fee. A ~~No~~ person may not ~~shall be authorized or permitted to~~ serve or execute an injunction issued under this section unless the person is a law enforcement officer as defined in chapter 943.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against repeat violence, sexual violence, or dating violence, certified by the clerk of



the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

(b) ~~There shall be created~~ A Domestic, Dating, Sexual, and Repeat Violence Injunction Statewide Verification System is created within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions, dating violence injunctions, sexual violence injunctions, and repeat violence injunctions issued by the courts throughout this ~~the~~ state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner. The sheriff having jurisdiction over the residence of the petitioner may authorize the law enforcement officer serving the injunction to electronically transmit the



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proof of service.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection. The automated notice must ~~shall~~ be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

6. Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is

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lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 3. Subsection (8) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(8)(a)1. When the court issues an injunction for protection against stalking, the clerk of the court shall furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If the respondent resides in the county in which the petition is filed, the clerk of the court, with the consent of the sheriff, may electronically transmit the documents to the sheriff. However, if the respondent resides or can be found outside the county in which the petition is filed, the clerk of the court must electronically transmit a certified copy of such documents to the sheriff where the respondent resides or can be found. An electronically transmitted document ~~When requested by the sheriff, the clerk of the court may transmit a facsimile copy of~~


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~~an injunction that has been certified by the clerk of the court, and this facsimile copy~~ may be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it on the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall furnish to the sheriff such information concerning the respondent's physical description and location as is required by the Department of Law Enforcement to comply with the verification procedures set forth in this section. Notwithstanding any other law, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section must ~~shall~~ use service and verification procedures consistent with those of the sheriff.

2. If an injunction is issued and the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner to assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against stalking, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

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3. An order issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1. must ~~shall~~ be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk must ~~shall~~ note on the original order that service was effected. If delivery at the hearing is not possible, the clerk must ~~shall~~ mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

4. If the respondent has been served previously with a temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b)1. Within 24 hours after the court issues an injunction for protection against stalking or changes, continues, extends, or vacates an injunction for protection against stalking, the clerk of the court must forward a certified copy of the injunction for service to the sheriff having jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.



2. Within 24 hours after service of process of an injunction for protection against stalking upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff having jurisdiction over the residence of the petitioner. The sheriff having jurisdiction over the residence of the petitioner may authorize the law enforcement officer serving the injunction to electronically transmit the proof of service.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against stalking, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Department of Law Enforcement.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the Department of Law Enforcement.

5. Within 24 hours after an injunction for protection against stalking is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the Department of Law Enforcement of such action of the court.

Section 4. The Florida Sheriffs Association and the Florida


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Association of Court Clerks and Comptrollers shall establish a joint workgroup that includes clerks of the court and sheriffs to discuss and coordinate new procedures specified within this act. The workgroup shall begin convening immediately upon this act becoming a law. This section shall take effect upon becoming a law.

Section 5. 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 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 3 - 29

and insert:

741.30, F.S.; deleting an obsolete date; authorizing clerks of the court to electronically transmit certain documents relating to an injunction for protection against domestic violence under certain circumstances; requiring the clerks of the court to electronically transmit such documents under certain circumstances; providing that electronically transmitted documents may be served in the same manner as certified copies; providing that sheriffs may authorize law enforcement officers to electronically transmit proof of service under certain circumstances; making conforming and technical changes; amending ss. 784.046 and 784.0485, F.S.; authorizing clerks of the court to electronically transmit certain documents relating to


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injunctions for protection against repeat violence, sexual violence, or dating violence and against stalking, respectively, under certain circumstances; requiring them to electronically transmit such documents under certain circumstances; providing that sheriffs may authorize law enforcement officers to electronically transmit proof of service under certain circumstances; making conforming and technical changes; requiring the Florida Sheriffs Association and the Florida Association of Court Clerks and Comptrollers to establish a joint workgroup for a specified purpose; specifying the timeframe by which the workgroup must convene; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Cruz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 53 - 393
and insert:
(8)(a)1. The clerk of the court shall furnish a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any

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time of the day or night. If the respondent resides in the county in which the petition is filed, the clerk of the court, with the consent of the sheriff, may electronically transmit the documents to the sheriff. However, if the respondent resides or can be found outside the county in which the petition is filed, the clerk of the court must electronically transmit a certified copy of such documents to the sheriff where the respondent resides or can be found. An electronically transmitted document ~~When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction must be that has been certified by the clerk of the court, and the electronic this facsimile copy must~~ may be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court is ~~shall be~~ responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section must ~~shall~~ use service and verification


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procedures consistent with those of the sheriff.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against domestic violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. All orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1. must~~, shall~~ be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk must ~~shall~~ note on the original order that service was effected. If delivery at the hearing is not possible, the clerk must ~~shall~~ mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

If the respondent has been served previously with the temporary

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injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b) ~~There shall be created~~ A Domestic and Repeat Violence Injunction Statewide Verification System is created within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout this ~~the~~ state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner. The sheriff having jurisdiction over the residence of the petitioner may authorize the law enforcement officer serving the injunction to

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electronically transmit the proof of service.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice must ~~shall~~ be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original

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notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(8)(a)1. The clerk of the court shall furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If the respondent resides in the county in which the petition is filed, the clerk of the court, with the consent of the sheriff, may electronically transmit the documents to the sheriff. However, if the respondent resides or can be found outside the county in which the petition is filed, the clerk of the court must electronically transmit a certified copy of such documents to the sheriff where the respondent resides or can be found. An electronically transmitted document ~~When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction that has been certified by the clerk of the court, and this facsimile copy~~ may be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of the injunction, the sheriff must verify receipt with the sender

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before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court is ~~shall be~~ responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the chief judge's jurisdiction to effect this type of service and to receive a portion of the service fee. A ~~No~~ person may not ~~shall be authorized or permitted to~~ serve or execute an injunction issued under this section unless the person is a law enforcement officer as defined in chapter 943.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against repeat violence, sexual violence, or dating violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

(b) ~~There shall be created~~ A Domestic, Dating, Sexual, and Repeat Violence Injunction Statewide Verification System is

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created within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions, dating violence injunctions, sexual violence injunctions, and repeat violence injunctions issued by the courts throughout this ~~the~~ state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner. The sheriff having jurisdiction over the residence of the petitioner may authorize the law enforcement officer serving the injunction to electronically transmit the proof of service.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make


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information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection. The automated notice must ~~shall~~ be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

6. Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2.

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That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 3. Subsection (8) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(8)(a)1. The clerk of the court shall furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If the respondent resides in the county in which the petition is filed, the clerk of the court, with the consent of the sheriff, may electronically transmit the documents to the sheriff. However, if the respondent resides or can be found outside the county in which the petition is filed, the clerk of the court must electronically transmit a certified copy of such documents to the sheriff where the respondent resides or can be found. An electronically transmitted document ~~When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction that has been certified by the clerk of the court, and this facsimile copy~~ may be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it on the respondent. In addition, if

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the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall furnish to the sheriff such information concerning the respondent's physical description and location as is required by the Department of Law Enforcement to comply with the verification procedures set forth in this section. Notwithstanding any other law, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section must ~~shall~~ use service and verification procedures consistent with those of the sheriff.

2. If an injunction is issued and the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner to assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against stalking, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. An order issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1. must ~~shall~~ be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of

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such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk must ~~shall~~ note on the original order that service was effected. If delivery at the hearing is not possible, the clerk must ~~shall~~ mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

4. If the respondent has been served previously with a temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b)1. Within 24 hours after the court issues an injunction for protection against stalking or changes, continues, extends, or vacates an injunction for protection against stalking, the clerk of the court must forward a certified copy of the injunction for service to the sheriff having jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against stalking upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff having jurisdiction over the residence of the petitioner. The sheriff having jurisdiction

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over the residence of the petitioner may authorize the law enforcement officer serving the injunction to electronically transmit the proof of service.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against stalking, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Department of Law Enforcement.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the Department of Law Enforcement.

5. Within 24 hours after an injunction for protection against stalking is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the Department of Law Enforcement of such action of the court.

Section 4. The Florida Sheriffs Association and the Florida Association of Court Clerks and Comptrollers shall establish a joint workgroup that includes clerks of the court and sheriffs to discuss and coordinate new procedures specified within this act. The workgroup shall begin convening immediately upon this act becoming a law. This section shall take effect upon becoming

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a law.

Section 5. 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 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 3 - 29

and insert:

741.30, F.S.; deleting an obsolete date; authorizing clerks of the court to electronically transmit certain documents relating to an injunction for protection against domestic violence under certain circumstances; requiring the clerks of the court to electronically transmit such documents under certain circumstances; providing that electronically transmitted documents may be served in the same manner as certified copies; providing that sheriffs may authorize law enforcement officers to electronically transmit proof of service under certain circumstances; making conforming and technical changes; amending ss. 784.046 and 784.0485, F.S.; authorizing clerks of the court to electronically transmit certain documents relating to injunctions for protection against repeat violence, sexual violence, or dating violence and against stalking, respectively, under certain circumstances; requiring them to electronically transmit such documents under certain circumstances; providing that

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sheriffs may authorize law enforcement officers to electronically transmit proof of service under certain circumstances; making conforming and technical changes; requiring the Florida Sheriffs Association and the Florida Association of Court Clerks and Comptrollers to establish a joint workgroup for a specified purpose; specifying the timeframe by which the workgroup must convene; providing effective dates.

By the Committee on Judiciary; and Senators Cruz, Gibson, and Jones

590-02513-22 2022654c1

A bill to be entitled

An act relating to protective injunctions; amending s. 741.30, F.S.; deleting an obsolete date; specifying a timeframe in which the clerk of the court must transmit specified documents relating to an injunction for protection against domestic violence to the appropriate local sheriff or law enforcement agency; providing for the electronic transmission of certain documents rather than by facsimile; authorizing clerks of the court to provide such documents by facsimile, hand delivery, or certified or registered mail under certain circumstances; providing that electronically submitted copies of injunctions must be served in the same manner as certified copies; making conforming and technical changes; amending ss. 784.046 and 784.0485, F.S.; specifying a timeframe in which the clerk of the court must transmit specified documents relating to injunctions for protection against repeat violence, sexual violence, or dating violence and against stalking, respectively, to the appropriate local sheriff or law enforcement agency; providing for the electronic transmission of certain documents rather than by facsimile; authorizing clerks of the court to provide such documents by facsimile, hand delivery, or certified or registered mail under certain circumstances; providing that electronically submitted copies of injunctions must be served in the same manner as certified copies; making conforming and technical changes; providing an effective date.

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

590-02513-22 2022654c1

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

Section 1. Paragraph (a) of subsection (2) and subsection (8) of section 741.30, Florida Statutes, are amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(2)(a) Notwithstanding any other ~~provision of~~ law, the assessment of a filing fee for a petition for protection against domestic violence is prohibited ~~effective October 1, 2002~~. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence issued by the court, at the rate of $40 per petition. The request for reimbursement must ~~shall~~ be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay any law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee may ~~shall~~ not exceed $20.

(8)(a)1. Within 24 hours after the court issues an injunction for protection against domestic violence, the clerk of the court shall electronically transmit ~~furnish~~ a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a

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

law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may provide copies to the sheriff's office or law enforcement agency by facsimile, hand delivery, or certified or registered mail. An electronic ~~When requested by the sheriff, the clerk of the court may transmit a facsimile~~ copy of an injunction must be ~~that has been~~ certified by the clerk of the court, and the electronic ~~this facsimile~~ copy must ~~may~~ be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court is ~~shall be~~ responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section must ~~shall~~ use service and verification

procedures consistent with those of the sheriff.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against domestic violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. All orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1. must~~, shall~~ be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

If the respondent has been served previously with the temporary injunction and has failed to appear at the initial hearing on

the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b) ~~There shall be created~~ A Domestic and Repeat Violence Injunction Statewide Verification System is created within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must electronically transmit ~~forward~~ a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may provide copies to the sheriff's office by facsimile, hand delivery, or certified or registered mail. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must electronically

transmit ~~forward~~ the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice must ~~shall~~ be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk

of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(8)(a)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court shall electronically transmit ~~furnish~~ a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may furnish copies to the sheriff's office or law enforcement agency by facsimile, hand delivery, or certified or registered mail. An electronic ~~When requested by the sheriff, the clerk of the court may transmit a facsimile~~ copy of an injunction must be ~~that has been~~ certified by the clerk of the court, and the electronic ~~this facsimile~~ copy must ~~may~~ be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of

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the injunction, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court is ~~shall be~~ responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the chief judge's jurisdiction to effect this type of service and to receive a portion of the service fee. A ~~No~~ person may not ~~shall be authorized or permitted to~~ serve or execute an injunction issued under this section unless the person is a law enforcement officer as defined in chapter 943.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against repeat violence, sexual violence, or dating violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

(b) ~~There shall be created~~ A Domestic, Dating, Sexual, and

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Repeat Violence Injunction Statewide Verification System is created within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions, dating violence injunctions, sexual violence injunctions, and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must electronically transmit ~~forward~~ a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must electronically transmit ~~forward~~ the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

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4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection. The automated notice must ~~shall~~ be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

6. Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

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Section 3. Subsection (8) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(8)(a)1. Within 24 hours after the court issues an injunction for protection against stalking, the clerk of the court shall electronically transmit ~~furnish~~ a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may furnish copies to the sheriff's office or law enforcement agency by facsimile, hand delivery, or certified or registered mail. An electronic ~~When requested by the sheriff, the clerk of the court may transmit a facsimile~~ copy of an injunction must be ~~that has been~~ certified by the clerk of the court, and the electronic ~~this facsimile~~ copy must ~~may~~ be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it on the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a

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

law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall furnish to the sheriff such information concerning the respondent's physical description and location as is required by the Department of Law Enforcement to comply with the verification procedures set forth in this section. Notwithstanding any other law, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section must ~~shall~~ use service and verification procedures consistent with those of the sheriff.

2. If an injunction is issued and the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner to assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against stalking, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. An order issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1. must ~~shall~~ be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not

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possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

4. If the respondent has been served previously with a temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b)1. Within 24 hours after the court issues an injunction for protection against stalking or changes, continues, extends, or vacates an injunction for protection against stalking, the clerk of the court must electronically transmit ~~forward~~ a certified copy of the injunction for service to the sheriff having jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against stalking upon a respondent, the law enforcement officer must electronically transmit ~~forward~~ the written proof of service of process to the sheriff having jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against stalking, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Department of Law

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Enforcement.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the Department of Law Enforcement.

5. Within 24 hours after an injunction for protection against stalking is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the Department of Law Enforcement of such action of the court.

Section 4. This act shall take effect July 1, 2022.

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 8, 2022

I respectfully request that **Senate Bill # 654**, relating to Protective Injunctions, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

SB 654 seeks to address an issue regarding time delays in transferring protective injunctions between the clerks of court and sheriffs' offices. SB 654 is intended to modernize and streamline the transmittal process by requiring electronic transmission of protective injunction documents.

Senator Janet Cruz
Florida Senate, District 18

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15
Meeting Date

RULES
Committee

HB/SB 654
Bill Number or Topic

913776
Amendment Barcode (if applicable)

Name Allie McNair

Phone 566-1979

Address 2167 Mahan Dr
Street

Email amcnair@flsheriffs.org

Tall FL 32308
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 Sheriffs Association

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

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

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S-001 (08/10/2021)

The Florida Senate

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2/15/22
Meeting Date

Rules
Committee

CS/SB 654
Bill Number or Topic

913776
Amendment Barcode (if applicable)

Name Jason Harrell

Phone 8503456835

Address 215 S Monroe St
Street

Email jasonharrell@flclerks.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ **I am appearing without compensation or sponsorship.**

☑ **I am a registered lobbyist, representing:**
Florida Court Clerks and Comptrollers

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

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

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The Florida Senate

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2-15-22
Meeting Date

Rules
Committee

654
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jenna Hodgens

Phone 813-307-7194

Address 601 E. Kennedy Blvd
Street

Tpa Fl. 33601
City State Zip

Email jenna.hodgens@hillsclerk.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: Hillsborough County Clerk + Comptroller

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

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

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The Florida Senate

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2-15-22
Meeting Date

Rules
Committee

1054
Bill Number or Topic

Amendment Barcode (if applicable)

Name Judy Byrne Riley

Phone 850-658-1561

Address 1521 Bayshore
Street

Niceville FL 32578
City State Zip

Email rileyjb1501@gmail.com

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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2-15-22
Meeting Date

Rules
Committee

654
Bill Number or Topic

Amendment Barcode (if applicable)

Name Cindy Stuart, Clerk of Court

Phone 813-307-7021

Address 601 E. Kennedy Blvd
Street

Email cindy.stuart@hillsclerk.com

Tpa
City

Fla.
State

33601
Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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2-15-22
Meeting Date

Rules
Committee

454
Bill Number or Topic

Amendment Barcode (if applicable)

Name Mindy Murph, CEO, The Spring Tampa Bay

Phone 813-340-2435

Address 11209 Green Park Circle

Email mimurphy@thespring.org

Street

Tpa Fla 33624

City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Tues Feb 15, th 2022	CS/SB 654
Meeting Date	Bill Number or Topic
Rules	
Committee	Amendment Barcode (if applicable)

Name Dr. Carolyn Zonia Phone 850-714-3793

Address 620 Fintwood Font Loop Email Zoniacarolyn@gmail.com
Street

Santa Rosa Beach FL
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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2-15-22
Meeting Date

Rules
Committee

654
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barbara DeVane

Phone 850-251-4282

Address 625 E Brevard St
Street

Tallahassee FL 32308
City State Zip

Email barbradevane1@yahoo.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 National Organization for Women

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

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

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S-001 (08/10/2021)

The Florida Senate
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2/15/22
Meeting Date

Rules
Committee

SB 654
Bill Number or Topic

Amendment Barcode (if applicable)

Name Francie Julius Edwards Phone 352-502-9844

Address 9825 SE 140th Street Email khamilah500@gmail.com
Street

Summerfield 34491
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

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15 February 2022
Meeting Date

Rules
Committee

SB 654
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kathryn F. White

Phone 850-862-0416

Address 18 Stewart Circle
Street

Email kathrynfosterwhite@gmail.com

Ft Walton Bch FL 32547
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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The Florida Senate

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02-15-2022
Meeting Date

Rules
Committee

SB 654
Bill Number or Topic

Amendment Barcode (if applicable)

Name Carollyn Taylor

Phone 850-384-8741

Address 2520 Celtic cir
Street

Email Carollyntaylor@gmail.com

Pensacola FL 32503
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

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2/15/2022
Meeting Date

RULES
Committee

SB 654
Bill Number or Topic

Amendment Barcode (if applicable)

Name JEAN SIEBENALER (SEE-BEN-AH-LER)

Phone 513-532-5408

Address 7502 OLD BAY POINTE RD
Street

Email j.siebenaler@gmail.com

MILTON FL 32583
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

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2/15/22
Meeting Date

Rules
Committee

SB 654
Bill Number or Topic

Amendment Barcode (if applicable)

Name Cherie Crim

Phone 214-679-8502

Address 11403 Poston Rd
Street

Email CCrim16@gmail.com

Panama City FL 32404
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

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2-15-2022
Meeting Date

Rules
Committee

SB 654
Bill Number or Topic

Amendment Barcode (if applicable)

Name Deborah Baker-Rianoe

Phone 850.499.0198

Address 3926 Balsam Drive
Street

Email deborah.bakerrian@gmail.com

Niceville FL 32578
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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2-15-2022
Meeting Date

Rules
Committee

SB 654
Bill Number or Topic

Amendment Barcode (if applicable)

Name Elisabeth Sandberg

Phone (763) 710-8721

Address 203 Rigdon Ct. N.W.
Street

Email sandberg.umn@gmail.com

Fort Walton Beach, FL 32548
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 692
INTRODUCER:	Rules Committee; Criminal Justice Committee; and Senators Stewart and Harrell
SUBJECT:	Sexual Offenses
DATE:	February 15, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Cox	CF	**Favorable**
2.	Stokes	Jones	CJ	**Fav/CS**
3.	Stokes	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 692 amends ss. 365.161(1), 491.0112(4), 775.0847(1), 794.011(1), 794.05, 796.07(1), 800.04(1), 825.1025(1), 827.071, 847.001, 872.06(1), 944.35(3), and 951.27(2), F.S., relating to various sexual offenses, to replace the terms "vagina" or "vaginal" with "female genitals." Additionally, this bill provides that "female genitals" means the labia majora, labia minora, clitoris, vulva, hymen, and vagina.

Section 794.011(3), F.S., provides it is a life felony for a person to commit sexual battery on a person 12 years of age or older, without that person's consent, and in the process thereof use or threaten to use a deadly weapon, or use actual force likely to cause serious personal injury. This bill expands s. 794.011(3), F.S., to provide it is also a life felony if a person uses or *threatens to use* actual physical force likely to cause serious personal injury or *death.*

The bill amends s. 775.15, F.S., to expand the statute of limitations by one year for victims of sexual battery who were unaware that the sexual battery occurred due to the victim being mentally defective, mentally incapacitated, or physically helpless. Prosecution for such cases may be commenced within one year after the date the victim obtains actual knowledge of the offense or the date on which the offense is reported to law enforcement, whichever occurs first. This applies to any offense which is not otherwise barred from prosecution on or before October 1, 2022.

The bill amends s. 90.404, F.S., to provide that substantial similarity is not required for admission of evidence of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense, when the defendant is charged with a sexual offense and his or her identity is not at issue.

Additionally, the bill amends ss. 395.0197, 415.102, and 847.0141, F.S., to make conforming cross-reference changes to comply with the act.

This bill may have a positive indeterminate fiscal impact (unquantifiable positive prison bed impact). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2022.

II. Present Situation:

The term "vagina" is used to describe prohibited sexual conduct in various sections of the Florida Statutes, but is not statutorily defined. Currently, the Florida District Courts of Appeals (DCA) have conflicting opinions on the definition of the term "vagina." Specifically, the Second and Fourth DCAs have held that the vagina has a specific anatomical meaning, and that it is internal.[1] However, the Fifth DCA has held the term vagina includes the entire vulva area not just the internal passageway.[2]

Florida Statutes

Florida law currently contains a variety of statutes that prohibit acts relating to sexual battery, sexual conduct, obscenity, and sexual abuse. A summary of these laws follows.

Sexual Battery

Section 794.011, F.S., defines the crime of "sexual battery" to mean oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.[3]

Sexual battery is a capital felony[4] or life felony[5] when:

- A person 18 years of age or older commits a sexual battery on, or in an attempt to commit a sexual battery injures the sexual organs of, a person less than 12 years of age.[6]

[1] *See Richards v. State*, 738 So. 2d 415, 419 (Fla. 2nd DCA, 1999)(holding that the vagina should be defined as "the canal between the vulva and the uterus."); *Firekey v. State*, 557 So. 2d 582 (Fla. 4th DCA, 1989)(holding that penetration of the labia does not constitute sexual battery).
[2] *See Palumbo v. State*, 52 So. 3d 834 (Fla. 5th DCA, 2011).
[3] Section 794.011(1)(h), F.S.
[4] A capital felony is generally punishable by death or life imprisonment. Section 775.082, F.S. The courts have held that the death penalty may not be imposed for sex offenses. In Florida, the only crime for which the death penalty may be imposed is murder in the first degree. *See Rowe v. State*, 417 So. 2d 981, 982 (Fla. 1982). *See also Buford v. State*, 403 So. 2d 943, 951 (Fla. 1981)(holding that the Eighth Amendment prohibits death penalty for rape or sexual battery, even of a child).
[5] A life felony is generally punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a fine not exceeding $15,000. Sections 775.082 and 775.083, F.S.
[6] Section 794.011(2)(a), F.S.

- A person less than 18 years of age commits sexual battery on, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age.[7]
- A person commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury.[8]
- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is less than 12 years of age, or in an attempt to commit sexual battery injures the sexual organs of the person.[9]

Sexual battery is a first degree felony, punishable by a term of years not exceeding life,[10] when:

- A person 18 years of age or older commits sexual battery on a person 12 years of age or older, but younger than 18 years of age without that person's consent, under specified circumstances.[11, 12]
- A person commits sexual battery on a person 12 years of age or older without that person's consent, under specified circumstances, and that person was previously convicted of specified crimes.[13]
- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is 12 years of age or older but younger than 18 years of age.[14]

[7] Section 794.011(2)(b), F.S.
[8] Section 794.011(3), F.S.
[9] Section 794.011(8)(c), F.S.
[10] A first degree felony may be punishable by a term of years not exceeding life imprisonment when specifically provided by statute and a fine not exceeding $10,000. Sections 775.082 and 775.083 F.S.
[11] Section 794.011(4)(a), F.S.
[12] Section 794.011(4)(e)1.-7., F.S., provides the following circumstances apply to certain crimes of sexual battery: the victim is physically helpless to resist; the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat; the offender coerces the victim to submit by threatening to retaliate against the victim or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future; the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim; the victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact; the victim is physically incapacitated; the offender is in a specified profession or a person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.
[13] Section 794.011(4)(d), F.S. Specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.
[14] Section 794.011(8)(b), F.S.

Sexual battery is a first degree felony, punishable by a term of imprisonment not exceeding 30 years,[15] when:

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older without that person's consent, under specified circumstances.[16, 17]
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older without that person's consent, under specified circumstances.[18, 19]
- A person 18 years of age or older commits sexual battery on a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.[20]
- A person commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of specified crimes.[21]

Sexual battery is a second degree felony[22] when:

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.[23]
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.[24]

Sexual battery is a third degree felony[25] when:

- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age solicits that person to engage in any act which constitutes sexual battery.[26]

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[15] The maximum term of imprisonment for a first degree felony is generally 30 years imprisonment and a fine not exceeding $10,000. Sections 775.082 and 775.083 F.S.
[16] *See note 12*.
[17] Section 794.011(4)(b), F.S.
[18] *See note 12.*
[19] Section 794.011(4)(c), F.S.
[20] Section 794.011(5)(a), F.S.
[21] Section 794.011(5)(d), F.S. Specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3. F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.
[22] The maximum term of imprisonment for a second degree felony is 15 years imprisonment and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S.
[23] Section 794.011(5)(b), F.S.
[24] Section 794.011(5)(c), F.S.
[25] The maximum term of imprisonment for a third degree felony is 5 years imprisonment and a fine not exceeding $5,000. Sections 775.082 and 775.083 F.S.
[26] Section 794.011(8)(a), F.S.

Statutes of Limitations for Sexual Battery

Section 775.15, F.S., sets forth time limitations, also referred to as statutes of limitation, for the prosecution of crimes. Prosecution is barred if it is not commenced within the time limitations provided in this section. The time limitation for prosecuting a criminal case begins to run on the day after the offense is committed, unless otherwise stated. An offense is deemed to have been committed when either every element of the offense has occurred or, if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.[27]

In part, s. 775.15, F.S., provides time limitations for initiating a criminal prosecution for a felony offense. The general provisions provide that there is:

- No time limitation for prosecuting a capital felony, a life felony, a felony resulting in death.[28]
- A 4-year time limitation for prosecuting a first degree felony.[29]
- A 3-year time limitation for prosecuting a second or third degree felony.[30]

However, a number of exceptions to the time limitation provisions mentioned above exist. Many of these exceptions are specific to certain offenses or types of victims. These exceptions apply, in part, to violations of s. 794.011, F.S., relating to sexual battery. These exceptions include:

- No time limitation for prosecuting:
  - A first or second degree felony sexual battery when the victim is under 18 years of age and he or she reports the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before December 31, 1984;[31]
  - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003;[32]
  - Any felony sexual battery when the victim is younger than 16 years of age provided the offense was not barred from prosecution on or before July 1, 2010;[33]
  - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours;[34] and
  - Any sexual battery offense, when the victim is younger than 18 years of age when the offense was committed, and the offense was committed on or after July 1, 2020.[35]
- There is an eight-year time limitation on prosecuting a first or second degree felony sexual battery when the victim is 16 years of age or older at the time of the offense provided the offense was not barred from prosecution on or before July 1, 2015, except for:
  - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours; or

[27] Section 775.15(3), F.S.
[28] Section 775.15(1), F.S.
[29] Section 775.15(2)(a), F.S. A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[30] Section 775.15(2)(b), F.S. A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine and a third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[31] Section 775.15(13)(a), F.S.
[32] Section 775.15(13)(b), F.S.
[33] Section 775.15(13)(c), F.S.
[34] Section 775.15(14)(a), F.S.
[35] Section 775.15(20), F.S.

- A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003.[36]

In addition to the time periods prescribed in this section, the prosecution for specific enumerated offenses,[37] including sexual battery, and lewd or lascivious offenses, may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.[38] This exception applies to offenses that are not otherwise barred on or after July 1, 2006.[39, 40]

Another exception provides that the applicable period of limitation does not begin to run until the victim of a sexual battery, lewd or lascivious offense, or other specified offense reaches the age of 18 years or the violation is reported to a law enforcement or governmental agency, whichever occurs first. This provision only applies to a victim who was younger than 18 years of age at the time of the offense.[41]

Unlawful Activity with Certain Minors

Florida law prohibits a person 24 years of age or older from engaging in sexual activity with a person who is 16 or 17 years of age, regardless of consent. Sexual activity means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.[42]

Lewd and Lascivious Offenses

Florida Law contains various sections of law relating to lewd and lascivious offenses. This includes, in part, prohibitions on lewd and lascivious battery of an elderly or disabled person, and lewd and lascivious molestation of a person under the age of 16.

Lewd and Lascivious Battery on an Elderly or Disabled Person

A person commits a lewd and lascivious battery upon an elderly person or disabled person, when he or she 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,

[36] Section 775.15(14)(b), F.S.
[37] Section 775.15(16)(a), F.S., applies these provisions to the following offenses: aggravated battery or any felony battery offense under ch. 784, F.S.; kidnapping offenses under s. 787.01, F.S., or false imprisonment offenses under s. 787.02, F.S.; sexual battery offenses under ch. 794, F.S.; lewd or lascivious offenses under s. 800.04, F.S., s. 825.1025, F.S., or s. 847.0135(5), F.S.; burglary offenses under s. 810.02, F.S.; robbery offenses under s. 812.13, F.S., s. 812.131, F.S., or s. 812.135, F.S.; carjacking offenses under s. 812.133, F.S.; or aggravated child abuse under s. 827.03, F.S.
[38] Section 775.15(16)(a), F.S.
[39] Section 775.15(16)(b), F.S.
[40] *Bryson v. State*, 42 So. 3d 852 (Fla. 1st DCA 2010) (holding that the appellants prosecution was not barred, and that s. 775.15(16), F.S., could be applied because appellant's case was not barred at the time that section was enacted).
[41] Section 775.15(13)(a), F.S.
[42] Section 794.05, F.S. Sexual activity under this section does not include an act done for a bona fide medical purpose. A violation of this section is a second degree felony.

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.[43]

Sexual activity, as it relates to lewd and lascivious battery on an elderly or disabled person, means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.[44]

Lewd or Lascivious Molestation on Persons Under the Age of 16

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.[45]

The terms "lewd" and "lascivious" are not defined in statute, but are commonly understood by the courts. The Supreme Court of Florida has found that these terms are in common use, and the plain meaning of the words gives notice as to what conduct is prohibited. The court further stated that the words lewd and lascivious "are synonyms and connote wicked, lustful, unchaste, licentious, or sensual design on the part of the perpetrator."[46]

An offender 18 years of age or older who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a life felony.[47]
- Twelve years of age or older but less than 16 years of age, commits a second degree felony.[48]
- Twelve years of age or older but less than 16 years of age and the person was previously convicted of specified offenses,[49] commits a first degree felony.[50]

[43] Section 825.1025(2), F.S. A lewd or lascivious battery on an elderly person or disabled person is a second degree felony.
[44] Section 825.1025(1), F.S. Sexual activity does not include an act done for a bona fide medical purpose.
[45] Section 800.04(5)(a), F.S.
[46] *Chesebrough v. State*, 255 So. 2d 675, 677 (Fla. 1971).
[47] Section 800.04(5)(b), F.S. A life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years. Section 775.082, F.S.
[48] Section 800.04(5)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S.
[49] Section 800.04(5)(e)1.-7., F.S., provides the following specified offenses: Kidnapping under s. 787.01(2) F.S., or False Imprisonment under s. 787.02(2), F.S., when the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed against the minor a sexual battery under ch. 794, F.S., or a lewd act under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; Kidnapping under s. 787.01(3)(a)2. or 3., F.S., and in the course of committing the kidnapping committed a sexual battery under ch. 794, F.S., or a lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct or lewd or lascivious exhibition under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; False Imprisonment under s. 787.02(3)(a)2. or 3., F.S., and in the course of committing the false imprisonment committed a sexual battery under ch. 794, F.S., or a lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct or lewd or lascivious exhibition under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; Sexual Battery under ch. 794, F.S., excluding s. 794.011(10), F.S.; Lewd or Lascivious offenses committed against or in the presence of an elderly or disabled person under s. 825.1025, F.S.; Computer Pornography Transmission under s. 847.0135(5), F.S.; or Lewd or Lascivious offenses under s. 800.04, F.S.
[50] Section 800.04(5)(e), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a terms of years not exceeding life imprisonment. Section 775.082, F.S.

An offender less than 18 years of age who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a second degree felony.[51]
- Twelve years of age or older but less than 16 years of age, commits a third degree felony.[52]

Obscenity, Sexual Performance by a Child, Child Pornography

Obscenity

Chapter 847, F.S., governs obscenity, which includes in part, laws relating to: the prohibition of certain acts in connection with obscene, lewd, etc. materials; the regulation of harmful materials and the sale or distribution to minors; and computer pornography, prohibited computer usage, and traveling to meet minors.

For purposes of this chapter the term "obscene," means the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interests;
- Depicts or describes, in a patently offensive way, sexual conduct; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.[53]

Sexual Performance by a Child

Section 827.071, F.S., provides that it is a second degree felony to employ, authorize, or induce a child younger than 18 years of age to engage in a sexual performance,[54]or for a parent, legal guardian, or custodian of such child to consent to the participation by such child in a sexual performance.[55] It is also a second degree felony for any person to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age.[56]

A person may not possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.[57]

Additionally, it is a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.[58]

[51] Section 800.04(5)(c)1., F.S.
[52] Section 800.04(5)(d), F.S. A third degree felony is punishable by up to five years in state prison and a fine not exceeding $5,000. Sections 775.082 and 775.083, F.S.
[53] Section 847.001(10), F.S. A mother's breastfeeding of her baby is not under any circumstance "obscene."
[54] Section 827.071(1)(i), F.S., defines "sexual performance" to mean any performance or part therefor which includes sexual conduct by a child less than 18 years of age. Additionally, s. 827.071(1)(c), F.S., defines "performance" to mean any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.
[55] Section 827.071(2), F.S.
[56] Section 827.071(3), F.S.
[57] Section 827.071(4), F.S.
[58] Section 827.071(5), F.S.

Possession or Promotion of Child Pornography

Section 775.0847, F.S., reclassifies violations of s. 827.071, F.S., relating to sexual performance by a child; s. 847.0135, F.S., relating to computer pornography, prohibited computer usage, and traveling to meet a minor; s. 847.0137, F.S., relating to transmission of pornography by electronic device or equipment; and s. 847.0138, F.S., relating to transmission of material harmful to minors to a minor by electronic device or equipment, to the next higher degree if:

- The offender possesses 10 or more images of any form of child pornography[59] regardless of content; and
- The content of at least one image contains one or more of the following:
  - A child who is younger than the age of 5.
  - Sadomasochistic abuse[60] involving a child.
  - Sexual battery involving a child.
  - Sexual bestiality involving a child.
  - Any movie involving a child, regardless of length and whether the movie contains sound.[61]

The following definitions apply to the above-described offenses:

- "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.[62]
- "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.[63]
- "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstances constitute "sexual conduct."[64]

Prohibition of Certain Obscene Telephone Calls

A person commits a second degree misdemeanor[65] if he or she makes, or knowingly permits the use of a telephone or telephone facility under his or her control to make any obscene or indecent communication by means of a telephone, in person or through an electronic recording device, in exchange for payment.[66]

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[59] Section 775.0847(1)(b), F.S,, defines "child pornography" to mean any image depicting a minor engaged in sexual conduct.
[60] Section 775.0847(1)(c), F.S., defines "sadomasochistic abuse," to mean flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.
[61] Section 775.0847(2), F.S.
[62] Sections 775.0847(1)(d), 827.071(1)(f), and 847.001(14), F.S.
[63] Sections 775.0847(1)(e), 827.071(1)(g), and 847.001(15), F.S.
[64] Sections 775.0847(1)(f), 827.071(1)(h), and 847.001(16), F.S.
[65] A second degree misdemeanor is punishable by a term of imprisonment up to 60 days and a fine not exceeding $500. Sections 775.082 and 775.083, F.S.
[66] Section 356.161(2), F.S.

For purposes of s. 365.161, F.S., "obscene" means the status of communication which:
- The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interests;
- Describes, in a patently offensive way, deviate sexual intercourse, sadomasochistic abuse, sexual battery, bestiality, sexual conduct, or sexual excitement; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Additionally, s. 365.161, F.S., provides, in part, the following definitions:
- "Sexual battery," means oral, anal, or vaginal penetration by, or union with, the sexual organ of the one and the mouth, anus, or vagina of the other.[67]
- "Sexual bestiality," means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.[68]

Abuse of a Dead Human Body

A person who mutilates, commits sexual abuse upon, or otherwise grossly abuses the dead human body commits a second degree felony. An act done for a bona fide medical purpose or any other lawful purpose does not violate this law.[69]

For purposes of this section, "sexual abuse" means:
- Anal or vaginal penetration of a dead human body by the sexual organ of a person or by any other object;
- Contact or union of the penis, vagina, or anus of a person with the mouth, penis, vagina, or anus of a dead human body; or
- Contact or union of a person's mouth with the penis, vagina, or anus of a dead human body.[70]

Prostitution

Florida Law defines prostitution as the giving or receiving of the body for sexual activity for hire.[71] For purposes of prostitution, sexual activity means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation.[72]

Section 796.07(2), F.S., prohibits various acts relating to prostitution, providing in part, that it is unlawful:
- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.
- To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.
- To purchase the services of any person engaged in prostitution.

[67] Section 365.161(1)(d), F.S.
[68] Section 365.161(1)(e), F.S.
[69] Section 872.06(2), F.S.
[70] Section 872.06(1), F.S.
[71] This definition excludes sexual activity between spouses. Section 796.07(1)(a), F.S.
[72] Section 796.07(1)(d), F.S. Sexual activity does not include acts done for bona fide medical purposes.

Sexual Misconduct by Certain Professionals

Certain professionals are prohibited from engaging in sexual activity with specified individuals. This prohibition extends to consensual sexual activity.

Employees of the Department of Corrections (DOC) or a private correctional facility are prohibited from engaging in sexual misconduct with an inmate or an offender supervised by the DOC in the community. Such sexual misconduct is a third degree felony.[73]

Additionally, it is a third degree felony for a psychotherapist to commit sexual misconduct with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact. A second or subsequent violation is a second degree felony.[74]

Sexual misconduct means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.[75]

Blood Tests of Inmates

Section 951.27, F.S., provides that each county and municipal detention facility must have a written procedure to establish the conditions under which an inmate will be tested for infectious disease.[76]

Except as otherwise provided, the results of such blood tests are confidential and exempt. One such exception to this exemption is that a victim, or the victim's parent or legal guardian, may request the results of any human immunodeficiency virus test performed on an inmate who has been arrested for a sexual offense involving oral, anal, or vaginal penetration by, or union with, the sexual organ of another.

Admission of Evidence

Similar fact evidence of other crimes, wrongs, or acts is not admissible when such evidence is relevant solely to prove bad character or propensity. However, such similar fact evidence is admissible when relevant to prove a material fact in issue, including, but not limited to:

- Proof of motive.
- Opportunity.
- Intent.
- Preparation.
- Plan.
- Knowledge.
- Identity.

[73] Section 944.35, F.S. Sexual misconduct does not include acts done for bona fide medical purposes.
[74] Section 491.0112, F.S.
[75] *See* ss. 491.0112, and 944.35, F.S.
[76] Section 951.27(1), F.S.

- Absence of mistake or accident.[77]

However, s. 90.404(2)(b), F.S., provides that in a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant. Similarly, s. 90.404(2)(c), F.S., provides that in a criminal case in which the defendant is charged with a sexual offense, evidence of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense is admissible and may be considered for its bearing on any matter to which is relevant.

While the statutory construction of s. 90.404(2)(b), F.S., relating to child molestation, and s. 90.404(2)(c), F.S., relating to sexual offenses, is the same, the courts have interpreted these sections differently. Courts have applied s. 90.404(2)(c), F.S., to require "significant similarity between the collateral evidence and the charged crime, evidence so similar and specific that it resembles a clear pattern of conduct."[78] In contrast, courts have held in regards to s. 90.404(2)(b), F.S., that "under the plain language of the rule, relevant collateral crime evidence is admissible to corroborate a victim's testimony 'regardless of whether the charged and collateral offenses occurred in the familial context or whether they share any similarity.'"[79]

III. Effect of Proposed Changes:

This bill amends multiple statutes relating to various sexual offenses, to replace the terms "vagina" or "vaginal" with "female genitals." Additionally, this bill provides that "female genitals" means the labia majora, labia minora, clitoris, vulva, hymen, and vagina.

Specifically, the bill amends the following sections to replace the term "vagina" or "vaginal" with "female genitals":

- Section 365.161(1), F.S., which provides definitions relating to the prohibition of certain obscene telephone communications.
- Section 491.0112(4), F.S., which provides definitions relating to sexual misconduct by a psychotherapist.
- Section 775.0847(1), F.S., which provides definitions relating to the possession or promotion of certain images of child pornography.
- Section 794.011(1), F.S., which provides definitions relating to sexual battery.
- Section 794.05, F.S., which provides definitions relating to unlawful sexual activity with certain minors.
- Section 796.07(1), F.S., which provides definitions relating to the prohibition of prostitution.
- Section 800.04(1), F.S., which provides definitions relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
- Section 825.1025(1), F.S., which provides definitions relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
- Section 827.071, F.S., which provides definitions relating to sexual performance by a child.
- Section 847.001, F.S., which provides definitions relating to obscenity.

[77] Section 90.404(2)(a), F.S.
[78] *Reyna v. State*, 302 So. 3d 1025, 1031 (Fla. 4th DCA 2020).
[79] *Pridemore v. State*, 301 So. 3d 454, 459 (Fla. 4th DCA 2020)(quoting *McLean v. State*, 934 So. 2d 1248, 1259 (Fla. 2006).

- Section 872.06(1), F.S., which provides definitions relating to abuse of a dead human body.
- Section 944.35(3), F.S., which provides definitions relating to prohibited sexual misconduct.
- Section 951.27(2), F.S., relating to the blood test of inmates.

Section 794.011(3), F.S., provides it is a life felony for a person to commit sexual battery on a person 12 years of age or older, without that person's consent, and in the process thereof use or threaten to use a deadly weapon, or use actual force likely to cause serious personal injury. This bill expands s. 794.011(3), F.S., to provide it is also a life felony if a person uses or *threatens to use* actual physical force likely to cause serious personal injury or *death.*

The bill amends s. 775.15, F.S., to expand the statute of limitations by one year for victims of sexual battery who were unaware that the sexual battery occurred due to the victim being mentally defective, mentally incapacitated, or physically helpless. Prosecution for such cases may be commenced within one year after the date the victim obtains actual knowledge of the offense or the date on which the offense is reported to law enforcement, whichever occurs first. This applies to any offense which is not otherwise barred from prosecution on or before October 1, 2022.

The bill amends s. 90.404, F.S., to provide that substantial similarity is not required for admission of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense, when the defendant is charged with a sexual offense and his or her identity is not at issue.

Additionally, the bill amends ss. 395.0197, 415.102, and 847.0141, F.S., to make conforming cross-reference changes to comply with the act.

This bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) estimates that this bill has a positive indeterminate fiscal impact (unquantifiable positive prison bed impact). It is not known how many additional offenders could be charged under the expanded definition in the bill.[80]

Additionally, the CJIC estimates that SB 878, which has been included by amendment in this bill, to have a positive indeterminate fiscal impact (unquantifiable positive prison bed impact). This bill amends multiple sex crime statutes, replacing "vagina" with "female genitals." The bill further amends s. 794.011(3), F.S., to make it a life felony for a specified sexual battery when a perpetrator uses *or threatens to use* actual physical force likely to cause serious personal injury *or death***.** [81]

This bill also amends s. 775.15, F.S., to expand the statute of limitations by one year for certain victims of sexual battery.

Per DOC, in FY 18-19, there were 1,348 new commitments to prison under the statutes amended in this bill. In FY 19-20, there were 1,145 new commitments, and in FY 20-21, there were 857 new commitments. For s. 794.011(3), F.S., specifically, there were 47 new commitments in FY 18-19, 44 new commitments in FY 19-20, and 26 new commitments in FY 20-21. It is not known how many additional offenders could be charged under these expanded definitions. Furthermore, under s. 794.011, F.S., there were 504 new commitments in FY 18-19, 424 in FY 19-20, and 274 in FY 20-21, though it is not known what number of these involved "mentally defective, mentally incapacitated, or physically helpless" victims, nor is it known how many additional offenders would enter prison due to the new language under s. 775.15, F.S.[82]

[80] *See* Criminal Justice Impact Conference, *Summary on SB 692, Sexual Offense Definition* (February 7, 2022)(on file with the committee on Criminal Justice).
[81] *See* Criminal Justice Impact Conference, *Summary on SB 878, Sexual Offenses* (February 7, 2022)(on file with the committee on Criminal Justice).
[82] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 90.404, 365.161, 395.0197, 415.102, 491.0112, 775.0847, 775.15, 794.011, 794.05, 796.07, 800.04, 825.1025, 827.071, 847.001, 847.0141, 872.06, 944.35, and 951.27.

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 15, 2022:
The committee substitute removes the section of the bill that creates the new felony offense of lewd and lascivious molestation of a person 16 years of age or older.

CS by Criminal Justice on February 8, 2022:
This committee substitute:

- Amends multiple sections of law to reference the term "female genitals," rather than the term "vagina."
- Creates a new crime related to lewd or lascivious molestation of a person 16 years of age or older. Specifically, it is a third degree felony for a person to intentionally touch the breasts, genitals, genital area, or buttocks of a person 16 years of age or older, without that person's consent, in a lewd or lascivious manner. Additionally, it is a third degree felony to force a person 16 years of age or older to so touch the perpetrator.
- Expands the statutes of limitations by one year for certain victims of sexual battery.
- Provides that substantial similarity is not required to admit evidence of other crimes, wrongs, or acts involving a sex offense, when the defendant is charged with a sex offense, and identity is not at issue.
- Provides that it is a life felony to commit a sexual battery on a person 12 years of age or older, without that person's consent, and threatens to use force likely to cause serious personal injury or death.
- Removes revisions made to ch. 39, F.S.

B. Amendments:

None.

259910

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
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	.	

The Committee on Rules (Stewart) recommended the following:

Senate Amendment (with title amendment)

Delete lines 216 - 228.

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

And the title is amended as follows:

Delete lines 22 - 25

and insert:

definition of the term "sexual activity"; amending s.

By the Committee on Criminal Justice; and Senators Stewart and Harrell

591-02800A-22 2022692c1

A bill to be entitled

An act relating to sexual offenses; amending s. 90.404, F.S.; providing that substantial similarity is not required for the admissibility of certain evidence in a criminal case in which the defendant is charged with a sexual offense; amending s. 365.161, F.S.; revising the definitions of the terms "sexual battery" and "sexual bestiality"; amending s. 491.0112, F.S.; revising the definition of the term "sexual misconduct"; amending s. 775.0847, F.S.; revising the definitions of the terms "sexual battery" and "sexual bestiality"; amending s. 775.15, F.S.; providing a time limitation for the prosecution of specified sexual battery offenses; providing applicability; amending s. 794.011, F.S.; defining the term "female genitals"; revising the definition of the term "sexual battery"; providing that a person who threatens to use actual physical force likely to cause serious bodily injury or death while committing specified sexual battery offenses commits a life felony; amending ss. 794.05, 796.07, and 800.04, F.S.; revising the definition of the term "sexual activity"; creating s. 800.06, F.S.; creating the offense of lewd or lascivious molestation of a person 16 years of age or older; providing criminal penalties; amending s. 825.1025, F.S.; revising the definition of the term "sexual activity"; amending ss. 827.071 and 847.001, F.S.; revising the definitions of the terms "sexual battery" and "sexual bestiality"; amending s. 872.06,

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F.S.; revising the definition of the term "sexual abuse"; amending s. 944.35, F.S.; revising the definition of the term "sexual misconduct"; amending s. 951.27, F.S.; requiring that HIV test results performed on inmates arrested for sexual offenses involving female genital penetration be disclosed under certain circumstances; amending ss. 395.0197, 415.102, and 847.0141, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 90.404, Florida Statutes, is amended to read:

90.404 Character evidence; when admissible.—

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(c)1. In a criminal case in which the defendant is charged with a sexual offense, evidence of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense is admissible and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "sexual offense" means conduct proscribed by s. 787.025(2)(c), s. 787.06(3)(b), (d), (f), or (g), former s. 787.06(3)(h), s. 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03, former s. 796.035, s. 825.1025(2)(b), s. 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

3. Substantial similarity is not required for admission of other crimes, wrongs, or acts when identity is not at issue.

Section 2. Paragraphs (d) and (e) of subsection (1) of section 365.161, Florida Statutes, are amended to read:

365.161 Prohibition of certain obscene telephone communications; penalty.—

(1) For purposes of this section, the term:

(d) "Sexual battery" means oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object.

(e) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals ~~vagina~~ of the other.

Section 3. Paragraph (c) of subsection (4) of section 491.0112, Florida Statutes, is amended to read:

491.0112 Sexual misconduct by a psychotherapist; penalties.—

(4) For the purposes of this section:

(c) "Sexual misconduct" means the oral, anal, or female genital ~~vaginal~~ penetration of another by, or contact with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any object.

Section 4. Paragraphs (d) and (e) of subsection (1) of section 775.0847, Florida Statutes, are amended to read:

775.0847 Possession or promotion of certain images of child pornography; reclassification.—

(1) For purposes of this section:

(d) "Sexual battery" means oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of

another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(e) "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals ~~vagina~~ of the other.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this section is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 5. Subsection (21) is added to section 775.15, Florida Statutes, to read:

775.15 Time limitations; general time limitations; exceptions.—

(21) In addition to the time periods prescribed in this section, a prosecution for sexual battery in violation of s. 794.011, where the victim was unaware of the sexual battery due to the victim being mentally defective, mentally incapacitated, or physically helpless, may be commenced within 1 year after the date on which the victim obtains actual knowledge of the offense or the date on which the offense is reported to law enforcement, whichever occurs first. Any dissemination of a recording of such offense before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection. This subsection applies to any offense that is not otherwise barred from prosecution on or before October 1, 2022.

Section 6. Subsections (1), (3), and (8) of section 794.011, Florida Statutes, are amended to read:

794.011 Sexual battery.—

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) "Female genitals" means the labia majora, labia minora, clitoris, vulva, hymen, and vagina.

(c) ~~(b)~~ "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

(d) ~~(c)~~ "Mentally incapacitated" means 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.

(e) ~~(d)~~ "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.

(f) ~~(e)~~ "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(h) ~~(f)~~ "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(i) ~~(g)~~ "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(j) ~~(h)~~ "Sexual battery" means oral, anal, or female genital

~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(k) ~~(i)~~ "Victim" means a person who has been the object of a sexual offense.

(g) ~~(j)~~ "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof:

(a) Uses or threatens to use a deadly weapon; or

(b) Uses or threatens to use actual physical force likely to cause serious personal injury or death,

commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery ~~under paragraph (1)(h)~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but younger than 18 years of age which

constitutes sexual battery ~~under paragraph (1)(h)~~ commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery ~~under paragraph (1)(h)~~, or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

Section 7. Subsection (1) of section 794.05, Florida Statutes, is amended to read:

794.05 Unlawful sexual activity with certain minors.—

(1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this section, "sexual activity" means oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

Section 8. Paragraph (d) of subsection (1) of section 796.07, Florida Statutes, is amended to read:

796.07 Prohibiting prostitution and related acts.—

(1) As used in this section:

(d) "Sexual activity" means oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another; anal or female genital ~~vaginal~~ penetration of another by any other object; or the handling or fondling of the sexual

organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

Section 9. Paragraph (a) of subsection (1) of section 800.04, Florida Statutes, is amended to read:

800.04 Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.—

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

(a) "Sexual activity" means the oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

Section 10. Section 800.06, Florida Statutes, is created to read:

800.06 Lewd or lascivious offenses committed upon persons 16 years of age or older.—

(1) A person who intentionally touches in a lewd or lascivious manner, and without consent, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person 16 years of age or older, or forces a person 16 years of age or older to so touch the perpetrator, commits lewd or lascivious molestation of a person 16 years of age or older.

(2) A person who violates subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 11. Subsection (1) of section 825.1025, Florida Statutes, is amended to read:

825.1025 Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.—

(1) As used in this section, the term "sexual activity" means the oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

Section 12. Paragraphs (f) and (g) of subsection (1) of section 827.071, Florida Statutes, are amended to read:

827.071 Sexual performance by a child; penalties.—

(1) As used in this section, the following definitions shall apply:

(f) "Sexual battery" means oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(g) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals ~~vagina~~ of the other.

Section 13. Subsections (14) and (15) of section 847.001, Florida Statutes, are amended to read:

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

(14) "Sexual battery" means oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(15) "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex

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

organ of the one and the mouth, anus, or female genitals ~~vagina~~ of the other.

Section 14. Subsection (1) of section 872.06, Florida Statutes, is amended to read:

872.06 Abuse of a dead human body; penalty.—

(1) As used in this section, the term "sexual abuse" means:

(a) Anal or female genital ~~vaginal~~ penetration of a dead human body by the sexual organ of a person or by any other object;

(b) Contact or union of the penis, female genitals ~~vagina~~, or anus of a person with the mouth, penis, female genitals ~~vagina~~, or anus of a dead human body; or

(c) Contact or union of a person's mouth with the penis, female genitals ~~vagina~~, or anus of a dead human body.

Section 15. Paragraph (b) of subsection (3) of section 944.35, Florida Statutes, is amended to read:

944.35 Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.—

(3)(b)1. As used in this paragraph, the term "sexual misconduct" means the oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or female genital ~~vaginal~~ penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.

2. Any employee of the department or a private correctional facility as defined in s. 944.710 who engages in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of

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

sexual battery, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The consent of the inmate or offender supervised by the department in the community to any act of sexual misconduct may not be raised as a defense to a prosecution under this paragraph.

4. This paragraph does not apply to any employee of the department or any employee of a private correctional facility who is legally married to an inmate or an offender supervised by the department in the community, nor does it apply to any employee who has no knowledge, and would have no reason to believe, that the person with whom the employee has engaged in sexual misconduct is an inmate or an offender under community supervision of the department.

Section 16. Subsection (2) of section 951.27, Florida Statutes, is amended to read:

951.27 Blood tests of inmates.—

(2) Except as otherwise provided in this subsection, serologic blood test results obtained pursuant to subsection (1) are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such results may be provided to employees or officers of the sheriff or chief correctional officer who are responsible for the custody and care of the affected inmate and have a need to know such information, and as provided in ss. 775.0877 and 960.003. In addition, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the results of any HIV test performed on an inmate ~~who has been~~ arrested for any sexual offense involving

oral, anal, or female genital ~~vaginal~~ penetration by, or union with, the sexual organ of another, must ~~shall~~ be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. In such cases, the county or municipal detention facility shall furnish the test results to the Department of Health, which is responsible for disclosing the results to public health agencies as provided in s. 775.0877 and to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, as provided in s. 960.003(3).

Section 17. Subsection (10) of section 395.0197, Florida Statutes, is amended to read:

395.0197 Internal risk management program.—

(10) Any witness who witnessed or who possesses actual knowledge of the act that is the basis of an allegation of sexual abuse shall:

(a) Notify the local police; and

(b) Notify the hospital risk manager and the administrator.

For purposes of this subsection, "sexual abuse" means acts of a sexual nature committed for the sexual gratification of anyone upon, or in the presence of, a vulnerable adult, without the vulnerable adult's informed consent, or a minor. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a vulnerable adult's or minor's sexual organs, or the use of the vulnerable adult or minor to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act

which may reasonably be construed to be a normal caregiving action.

Section 18. Subsection (26) of section 415.102, Florida Statutes, is amended to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(26) "Sexual abuse" means acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

Section 19. Subsection (1) of section 847.0141, Florida Statutes, is amended to read:

847.0141 Sexting; prohibited acts; penalties.—

(1) A minor commits the offense of sexting if he or she knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity~~, as defined in s. 847.001(9),~~ and is harmful to minors, as those terms are defined in s. 847.001 ~~s. 847.001(6)~~.

(b) Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts

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

nudity~~, as defined in s. 847.001(9),~~ and is harmful to minors, as those terms are defined in s. 847.001 ~~s. 847.001(6)~~. A minor does not violate this paragraph if all of the following apply:

1. The minor did not solicit the photograph or video.

2. The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official.

3. The minor did not transmit or distribute the photograph or video to a third party.

Section 20. This act shall take effect October 1, 2022.

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 10, 2022

This bill will change definitions in current statutes defining sexual battery. The use of "Vagina" in statute has led to inconsistent outcomes in sexual battery prosecutions. By changing the term to "Female Genitals", this bill will allow for consistency while prosecuting sexual battery. The bill provides that substantial similarity is not required to admit evidence when the defendant is charged with sexual battery. The bill also expands the statute of limitations to one year, allowing for the prosecution of sexual battery if victims were unaware of the assault due to being mentally incapacitated, mentally defective, or physically helpless. The bill provides that it is a life felony to commit sexual battery on a person 12 years of age or older, without that persons consent, and threatens to use force likely to cause serious personal injury. The bill creates the offense of lewd and lascivious molestation of a person 16 years of age or older and provides that the offense is a third degree felony.

I respectfully request that **Senate Bill #692**, relating to Sexual Offenses, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Linda Stewart

Senator Linda Stewart
Florida Senate, District 13

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

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

2/15/22
Meeting Date

RULES
Committee

692
Bill Number or Topic

259910
Amendment Barcode (if applicable)

Name AARON WAYT, FL ASSN OF CRIM DEF LAWYERS Phone (407) 435-3194

Address _____ Email AARON@DONDUMPHREY.COM
Street

City *State* *Zip*

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

AMENDMENT

PLEASE CHECK ONE OF THE FOLLOWING:

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 722
INTRODUCER:	Criminal Justice Committee and Senator Perry
SUBJECT:	Education for Student Inmates
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	**Fav/CS**
2.	Hackett	Ryon	CA	**Favorable**
3.	Siples	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 722 authorizes a county or municipal detention facility or the Department of Corrections (DOC) to contract with a Florida College System institution to provide education services to its inmates. The bill affirmatively provides that state funds provided for the operation of postsecondary workforce programs may be expended on a state inmate with 24 months or less remaining on his or her sentence, notwithstanding s. 1011.81(4), F.S., which prohibits state funds for the Florida College System Program Fund from being expended on the education of state or federal inmates.

The bill will have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Sentencing of Inmates – Overview

A defendant that is convicted of a crime in the state of Florida may be incarcerated in either county jail or state prison based upon the degree of the offense. A number of factors are taken into consideration when determining whether a defendant will be committed to the custody of the jail or the DOC. A defendant convicted of a misdemeanor offense can be committed to the

custody of the county's chief correctional officer for no more than one year for a first degree misdemeanor or 60 days for a second degree misdemeanor.[1]

For a defendant convicted of a felony offense, the Criminal Punishment Code[2] (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.[3] The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.[4]

Education for County Inmates

A county and municipal detention facility[5] is authorized to contract with a district school board, the Florida Virtual School, or an authorized charter school[6] to provide education services for its inmates.[7] Such education services may include educational, career, or vocational training that is authorized by the sheriff or chief correctional officer.[8] The County Corrections Equality Act requires that female inmates have access to educational, vocational training, rehabilitation and substance abuse treatment that are equivalent to that provided to male inmates.[9]

County and municipal detention facilities must provide educational services to minors detained in such facilities if the minor has not graduated from high school or is an eligible student with disabilities under the age of 22 who has not graduated with a standard diploma or its equivalent. The educational services must be offered by the local school district in which the facility is located.[10] These educational services are based on the estimated length of time the youth will be in the facility and the youth's current level of functioning. School district superintendents or their designees must be notified by the county's chief correctional officer if a youth under the age of 21 is accepted into the facility.[11]

[1] Section 775.082(4), F.S.
[2] Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.
[3] Section 921.0022, F.S.
[4] *See* s. 775.082, F.S.
[5] Section 951.23(1)(a) and (d), F.S., define county detention facility to mean a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor; and a municipal detention facility to mean a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.
[6] Charter schools are authorized to operate under s. 1002.33, F.S.
[7] Section 951.176(1), F.S.
[8] *Id*.
[9] Section 951.175, F.S.
[10] Section 951.176(2), F.S.
[11] *Id*. A cooperative agreement must be developed with the local school district and applicable law enforcement units to address the notification requirement and the provision of educational services to these youth.

Education for State Prisoners

Section 944.801(1), F.S., establishes the Correctional Educational Program (CEP), within the Department of Corrections (DOC). The CEP is composed of the educational facilities and services of all institutions and facilities housing inmates operated by the DOC. The duties of the CEP, in part, include:

- Developing guidelines for the collection of education-related information during the inmate reception process and disseminating such information to classification staff of the DOC;[12]
- Monitoring and assessing all inmate education program services and reporting the results of such evaluation in the annual report of activities;
- Developing complete and reliable statistics on the educational histories, the city/intracity area and school district where the inmate was domiciled prior to incarceration, the participation in state educational and training programs, and the occupations of inmates confined in state correctional institutions;
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing inmate admission procedures;
- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out its duties and responsibilities and ensuring that agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education standards;
- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses;
- Developing a written procedure for selecting programs to add to or delete from the vocational curriculum, including labor market analyses;
- Ensuring that every inmate who has two years or more remaining to serve on his or her sentence at the time that he or she is received at an institution and who lack basic and functional literacy skills[13] attends at least 150 hours of sequential instruction in a correctional adult basic education program;[14]
- Recommending the award of additional gain-time for inmates who receive a high school equivalency diploma or a vocational certificate; and
- Ensuring that all education staff are certified in accordance with the Department of Education standards.[15]

[12] Section 944.801(3)(a), F.S. The information collected must include the inmates' areas of educational or vocational interest, vocational skills, and level of education.
[13] Section 1004.02, F.S., defines "basic literacy" as the demonstration of academic competence from 2.0 through 5.9 educational grade levels as measured by a means approved for this purpose by the State Board of Education, and "functional literacy" as the demonstration of academic competence from 6.0 through 8.9 educational grade levels as measured by a means approved for this purpose by the State Board of Education.
[14] Inmates are to be retested at the completion of the 150 hours of education. If an inmate has not attained functional literacy, the DOC may require the inmate to remain in the instructional program. The law provides exceptions, such as those serving life sentences or have been sentenced to death, insufficient facilities or staff to provide instruction, and exempted based on health concerns.
[15] Section 944.801(3), F.S.

The CEP is authorized to establish a prison entrepreneurship program;[16] to work in conjunction with other state agencies to train and certify inmates as firefighters;[17] and to contract with a district school board, the Florida Virtual School, or an authorized charter school to provide any educational, career, or vocational training authorized by the DOC.[18]

Currently, the DOC and its contracted entities deliver technical skills in training that spans 36 trade areas including: construction; manufacturing; welding; electricity; energy technology; warehouse/logistics; commercial vehicle driving; heavy equipment operations; barbering/cosmetology; culinary/hospitality; information technology; Heating, Ventilation, and Air Conditioning (HVAC); and landscape management.[19] The DOC partners with several college and community education partners to provide such programs, including North Florida Technical College, Palm Beach State College, Polk State College, Southwest Florida College, and Tallahassee Community College.[20]

Due to difficulty in recruiting and retaining qualified teachers, the DOC reports that the capacity for the career and technical education programs is reduced, and the academic education programs are being operated at 114 percent capacity, on average.[21]

According to the DOC, those who participate in Career and Technical training programs recidivate at a rate of 25.1 percent less than those who do not.[22] The DOC's internal analysis found that for every grade level increase achieved, a student's likelihood of recidivism decreases by three percent.[23]

Florida College System

The Florida College System (FCS) is comprised of 28 public colleges and community colleges in this state. While governed by local boards, the colleges are coordinated under the jurisdiction of the State Board of Education. Administratively, the Chancellor of Florida Colleges is the chief executive officer of the system, reporting to the Commissioner of Education who serves as the chief executive officer of Florida's K-20 System.[24]

The primary mission and responsibility of FCS institutions is responding to community needs for postsecondary academic education and career degree education. This mission and responsibility includes:

- Providing lower level undergraduate instruction and awarding associate degrees;
- Preparing students directly for careers requiring less than baccalaureate degrees;

[16] Section 944.801(5), F.S.
[17] Section 944.801(6), F.S.
[18] Section 944.801(7), F.S.
[19] Department of Corrections, *2022 Agency Legislative Bill Analysis for Senate Bill 722*, pg. 2, (Nov. 30, 2021) (on file with the Committee on Criminal Justice).
[20] *Id.*, at pgs. 2-3.
[21] *Id.*, at pg. 3.
[22] *Id.*, at pg. 2.
[23] *Id.*
[24] Department of Education, Florida College System, *About Us*, *available at* https://www.fldoe.org/schools/higher-ed/fl-college-system/about-us/ (last visited January 13, 2022).

- Providing student development services, including assessment, student tracking, support for disabled students, advisement, counseling, financial aid, career development, and remedial and tutorial services, to ensure student success;
- Promoting economic development for the state within each FCS institution district through the provision of special programs, including, but not limited to, the:
  - Enterprise Florida-related programs;
  - Technology transfer centers;
  - Economic development centers; and
  - Workforce literacy programs; and
- Providing upper level instruction and awarding baccalaureate degrees as specifically authorized by law.[25]

A separate and secondary role for FCS institutions includes offering of programs in:
- Community services that are not directly related to academic or occupational advancement;
- Adult education services, including adult basic education, adult general education, adult secondary education, and General Educational Development test instruction; and
- Recreational and leisure services.[26]

Florida College System Program Fund

The Florida College System Program Fund is comprised of appropriations made by the Legislature for operational support of the FCS institutions.[27] Program funds are apportioned and distributed to each FCS institution in accordance with state law and the rules of the State Board of Education.[28] State funds provided for the FCS Program Fund may not be expended on the education of state or federal inmates.[29]

Workforce Education

Workforce education includes adult general education and career education and may consist of a course or a program of study leading to an occupational completion point (OCP),[30] a career certificate, an applied technology diploma, or a career degree.[31] Specifically, workforce education includes:
- Adult general education programs;[32]
- Career certificate programs;[33]

[25] Section 1004.65(5), F.S.
[26] Section 1004.65(6), F.S.
[27] Section 1011.81(1), F.S.
[28] *Id*.
[29] Section 1011.81(4), F.S.
[30] An "occupational completion point" (OCP) means the occupational competencies that qualify a person to enter an occupation that is linked to a career and technical program. *See* s. 1004.02(21), F.S.
[31] Section 1004.02(25), F.S.
[32] "Adult general education" means comprehensive instructional programs designed to improve the employability of the state's workforce through adult basic education, adult secondary education, English for Speakers of Other Languages, applied academics for adult education instruction, and instruction for adults with disabilities. Section 1004.02(3), F.S.
[33] A "career certificate program" means a course of study that leads to at least one OCP. The program may also confer credit that may articulate with a diploma or career degree education program. Section 1004.02(20), F.S.

- Applied technology diploma (ATD) programs;[34]
- Continuing workforce education courses;[35]
- Degree career education programs;[36] and
- Apprenticeship[37] and preapprenticeship[38] programs.[39]

Any workforce education program may be conducted by a FCS institution or a school district, except that college credit in an associate in applied science (AAS) or an associate in science (AS) degree may be awarded only by a FCS institution. However, if an AAS or an AS degree program contains an OCP that confers a certificate or an ATD, that portion of the program may be conducted by a school district career center.[40]

Funding for Inmate Workforce Education Programs

Florida law limits how state funds may be used for inmates in workforce education programs. From 2018-2021, as a part of the appropriation implementation bill, the Legislature authorized specific appropriations to be used for the education of state or federal inmates, preempting a statutory provision that limited the use of such funds.[41] However, on July 1, 2022, the 2021 provision will expire and the statute will revert to the language as it existed on July 1, 2019. As of that date, the statute that prohibits the use of state funds for the operation of postsecondary workforce programs on state inmates with more than 24 months remaining to serve and all federal inmates will be reinstated.[42]

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[34] An "applied technology diploma (ATD) program" means a course of study that is part of a technical degree program, is less than 60 credit hours, and leads to employment in a specific occupation. An ATD program may consist of either technical credit or college credit. A public school district may offer an ATD program only as technical credit, with college credit awarded to a student upon articulation to a Florida College System (FCS) institution. Section 1004.02(7), F.S.

[35] "Continuing workforce education" means instruction that does not result in a technical certificate, diploma, associate in applied science (AAS) degree, or associate in science (AS) degree. Continuing workforce education is for: (1) individuals who are required to have training for licensure renewal or certification renewal by a regulatory agency or credentialing body; (2) new or expanding businesses; (3) business, industry, and government agencies whose products or services are changing so that retraining of employees is necessary or whose employees need training in specific skills to increase efficiency and productivity; or (4) individuals who are enhancing occupational skills necessary to maintain current employment, to cross train, or to upgrade employment. Section 1004.02(12), F.S.

[36] A "degree career education program" or "technical degree education program" means a course of study that leads to an AAS degree or an AS degree. A technical degree program may contain within it one or more program progression points and may lead to certificates or diplomas within the course of study. Section 1004.02(13), F.S.

[37] Registered apprenticeship programs enable employers to develop and apply industry standards to training programs for registered apprentices that can increase productivity and improve the quality of the workforce. Apprentices who complete registered apprenticeship programs are accepted by the industry as journey workers. Florida Department of Education, *Apprenticeship Programs*, *available at* http://fldoe.org/academics/career-adult-edu/apprenticeship-programs/ (last visited January 14, 2022).

[38] Registered pre-apprenticeship programs provide an avenue for both adults and youth who are at least 16 years old to become qualified to enter registered apprenticeship programs. Pre-apprenticeship programs are sponsored and operated by registered apprenticeship programs in the same trade or trades. Florida Department of Education, *Preapprenticeship*, *available at* http://fldoe.org/academics/career-adult-edu/apprenticeship-programs/preapprenticeship.stml (last visited January 14, 2022).

[39] Section 1011.80(1), F.S.

[40] Section 1011.80(2), F.S.

[41] *See* ss. 44 and 45, ch. 2018-10; ss. 52 and 53, ch. 2019-116; ss. 53 and 54, ch. 2020-114; and s. 24, ch. 2021-37, Laws of Fla.

[42] *Id.*

III. Effect of Proposed Changes:

The bill amends ss. 951.176 and 944.801, F.S., respectively, to authorize a county or municipal detention facility or the DOC to contract with a FCS institution to provide educational services. The educational services may include any educational, career, or vocational training that is authorized by a county or municipal detention facility or the DOC.

The bill affirmatively authorizes state funding for postsecondary workforce education programs to be expended on state inmates with 24 months or less remaining on their sentences, notwithstanding s. 1011.81(4), F.S., which prohibits state funds provided for the FCS Program Fund to be expended on the education of state or federal inmates.

The 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 fiscal impact is indeterminate as the costs for FCS institutions to provide programming is unknown. These costs may vary depending on the type of programming provided and the availability of resources.[43] The DOC states that there will also be an indeterminate cost for changes to its technological systems.[44]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 944.801, 951.176, and 1011.80.

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 Criminal Justice on February 1, 2022:
The committee substitute:

- Removes federal inmates from the authorization for the expenditure of state funds on postsecondary education workforce programs.
- Adds that the expenditure of state funds on postsecondary workforce programs for state inmates is authorized notwithstanding s. 1011.81(4), F.S., which prohibits state funds provided for the Florida College System Program Fund from being expended for the education of state or federal inmates.

B. Amendments:

None.

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

[43] *Supra* note 19, at pg. 5.
[44] *Id*., at pg. 7.

By the Committee on Criminal Justice; and Senator Perry

591-02594-22 2022722c1

A bill to be entitled

An act relating to education for student inmates; amending ss. 944.801 and 951.176, F.S.; authorizing the Department of Corrections and each county, respectively, to contract with Florida College System institutions to provide education services for student inmates; amending s. 1011.80, F.S.; authorizing the expenditure of state funds for the education of state inmates who have a specified amount of time remaining to serve on their sentences; providing an effective date.

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

Section 1. Subsection (7) of section 944.801, Florida Statutes, is amended to read:

944.801 Education for state prisoners.—

(7) The department may contract with a district school board, the Florida Virtual School, ~~or~~ a charter school authorized to operate under s. 1002.33, or a Florida College System institution to provide education services in the Correctional Education Program. The education services may include any educational, career, or vocational training ~~that is~~ authorized by the department.

Section 2. Subsection (1) of section 951.176, Florida Statutes, is amended to read:

951.176 Provision of education.—

(1) Each county may contract with a district school board, the Florida Virtual School, ~~or~~ a charter school authorized to operate under s. 1002.33, or a Florida College System institution to provide education services for inmates at county detention facilities. The education services may include any educational, career, or vocational training ~~that is~~ authorized by the sheriff or chief correctional officer, or his or her designee.

Section 3. Upon the expiration and reversion of the amendment made to section 1011.80, Florida Statutes, pursuant to section 25 of chapter 2021-37, Laws of Florida, paragraph (b) of subsection (8) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(8)

(b) Notwithstanding s. 1011.81(4), state funds provided for the operation of postsecondary workforce programs may ~~not~~ be expended for the education of state inmates with ~~more than~~ 24 months or less of time remaining to serve on their sentences ~~or federal inmates~~.

Section 4. This act shall take effect July 1, 2022.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Chair*
Transportation, *Vice Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Criminal Justice
Environment and Natural Resources

SENATOR KEITH PERRY
8th District

February 2, 2022

To: Senator Kathleen Passidomo, Chair
Rules Committee
Subject: Committee Agenda Request
Date: February 9, 2022

I respectfully request that **SB 722- Education for Student Inmates and SB 1408- Grandparents Visitation** (2022) be placed on the:

committee agenda at your earliest possible convenience.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

REPLY TO:
❒ 2610 NW 43rd Street, Suite 2B, Gainesville, Florida 32606 (352) 264-4040
❒ Marion County Board of Commissioners, 115 SE 25th Avenue, Ocala, Florida 34471 (352) 732-1249
❒ Putnam County Government Complex, 2509 Crill Avenue, Palatka, Florida 32177
❒ 406 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5008

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

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2/15/22
Meeting Date

Rules
Committee

CJC
SB 722 + ~~SB 514~~
Bill Number or Topic

Amendment Barcode (if applicable)

Name Catherine Fucini-Cannatella

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Ocala FL 34481
City State Zip

CJC Speaking: ~~For~~ Against Information **OR** Waive Speaking: In Support Against

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S-001 (08/10/2021)

The Florida Senate

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SB 722
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-15-2022
Meeting Date

SB 722
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name WILLIAM J. DIAZ

Phone 407-501-0194

Address 3251 E. COLONIAL DR
Street

Email CARACAS1030@YAHOO.COM

ORLANDO FL 32803
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules
Committee

722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Dayna Gaut

Phone 321-354-5265

Address 11667 Acosta Ave
Street

Email dayna@daynagaut.com

Orlando FL 32836
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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	SB 722
Meeting Date	Bill Number or Topic
Committee	Amendment Barcode (if applicable)

Name BRIAN FAY Phone 407 670-9581

Address 8202 Chatham Manor Blvd Email bfay@cu4a.org
Street

Orlando FL 32821
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/14/2022
Meeting Date

Rules
Committee

SB 722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Liam McClay, Santa Fe College

Phone 850-339-7724

Address 3000 NW 83rd Street
Street

Email liam.mcclay@sfcollege.edu

Gainesvile FL 32606
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:
Santa Fe College

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules
Committee

0722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Carey Haughwout

Phone 561-355-7601

Address 421 3rd St.
Street

Email careypd@pd15.org

West Palm Bch, FL 33401
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02/15/22
Meeting Date

Rules
Committee

SB 722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Robert Schmidt

Phone 860 367 7320

Address 11488 SW 82nd CT RD
Street

Email rdsbobbye@aol.com

Ocala FL 34481
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules
Committee

SB 722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Barbara Schmidt

Phone 860-367-7319

Address 11488 SW 82nd CT Rd
Street

Email barb1257@aol.com

Ocala FL 34481
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2-15-22
Meeting Date

Rules
Committee

SB 722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Douglas Cangatella

Phone 352-877-3220

Address 9315 SW 97th LN
Street

Email nokh1679@gmail.com

Ocala FL 34481
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

SB 722
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Luz M. Robles

Phone (352) 216-6716

Address 495 Marion Oaks Blvd
Street

Email stlmrs@gmail.com

Ocala, FL 34473
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/2022
Meeting Date

SB-722
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Ignacio Carrasquero

Phone 863-206 3352

Address 512 Brunello Dr.
Street

Email icarrasquero@outlook.com

Davenport FL 33897
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/2022
Meeting Date

SB 728
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Tyler Roderick

Phone 401-545-1070

Address 11841 Jefferson Commons Cir
Street

Email tylerroderick0@gmail.com

Orlando FL 32826
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

2-15-2022
Meeting Date

Rules
Committee

The Florida Senate
APPEARANCE RECORD

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

SB 722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Darrell Tootle

Phone 407-532-9076

Address 2250 Lee Rd
Street
Winter Park Fl 32789
City State Zip

Email Dtootle@gmail

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

SB 722
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Jose L Ramirez

Phone 4079364186

Address 1548 Deer Creek Dr
Street

Email jlramirez@gmail.com

Orl FL 32821
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02/16/2022
Meeting Date

SB 722
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Maria Magdalena Hornsby

Phone 407-242-5359

Address 854 Carver Park St. 306
Street

Email magdalena1946@icloud.com

Orlando FL 32805
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02/15/2022
Meeting Date

Senate Rules Committee
Committee

SB 722
Bill Number or Topic

Amendment Barcode (if applicable)

Name David J Meltzer

Phone 407.714.3746

Address 1345 Dunhill Dr.
Street

Email djmeltzer@reagan.com

Longwood FL 32750
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

RULES
Committee

722
Bill Number or Topic

Amendment Barcode (if applicable)

Name AARON WAYT, FLASSN OF CRIM DEF LAWYERS Phone (407) 435-3194

Address _____ Email AARON@DONPUMPHREY.COM
Street

City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

722
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Daniel Gauch

Phone 407 675 7006

Address 134 Isabella Way
Street

Email dlgauch87@gmail.com

Groveland FL 34736
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/22
Meeting Date

Senate Rules
Committee

SB 722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Bill Barnett

Phone (407) 312-8499

Address 815 Hallowell Circle
Street

Email barnettw1@att.net

Orlando FL 32828
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-15-22
Meeting Date

Rules
Committee

722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Henry J Muñoz

Phone 352-566-8617

Address 495 Marion Oaks Blvd
Street

Email sthjms@gmail.com

Ocala FL 34473
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/22
Meeting Date

722
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Nicole Martin

Phone 9048021907

Address 879 High Pointe Circle
Street

Email nicolemarie.nmb@gmail.com

Minneola FL. 34715
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2.15.22
Meeting Date

Rules
Committee

722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Donn Scott SPLC Action Fund Phone 850.251.3440

Address 201 W Park Ave #100 Email
Street

Tall fl 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2022 10:00
Meeting Date

Rules
Committee

722
Bill Number or Topic

Amendment Barcode (if applicable)

Name Dannie McMillon

Phone 407-855-7604

Address 1717 Orlando Central Pkwy
Street

Email legislation@floridaptea.org

Orlando FL 32809
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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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 728
INTRODUCER:	Rules Committee and Senator Harrell
SUBJECT:	Advanced Air Mobility
DATE:	February 15, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Favorable**
2.	Hackett	Ryon	CA	**Favorable**
3.	Price	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 728 creates the Advanced Air Mobility Study Task Force adjunct to the Florida Department of Transportation (FDOT). The bill directs the FDOT secretary, or the secretary's designee, to serve as chair of the task force and provides for additional members, either by identification or by appointment. Appointed members serve at the pleasure of the specified appointing authority. Task force members serve without compensation but are entitled to receive reimbursement for reasonable and necessary per diem and travel.

The bill directs the task force to meet as determined by the task force chair, hold public hearings, and receive public comment in locations throughout the state, or by electronic means, provided that a means for active participation is accommodated. The task force is directed to:

- Assess and describe the current state of development of the advanced air mobility industry, specifically, the deployment of electric vertical takeoff and landing eVTOL aircraft, defined in the bill as "a type of aircraft that uses electric power to hover, take off, and land vertically without a runway."
- Identify federal, state, and local laws, rules, regulations, and other requirements that may impact the development of the advanced air mobility industry in this state, including the potential deployment of eVTOL aircraft and infrastructure.
- Recommend revisions to current state law and regulations necessary to facilitate the continued development of the advanced air mobility industry and deployment of eVTOL aircraft and infrastructure in this state.
- Evaluate the potential integration of advanced air mobility into transportation plans.

By October 1, 2023, the task force is directed to submit to the Governor, the Senate President, and the House Speaker a report including the information, findings, and recommendations required as described above, as well as any other relevant material deemed appropriate by the task force. The task force is abolished upon submission of the report, and the undesignated section of law expires on December 31, 2023.

The fiscal impact to the FDOT is unknown but expected to be absorbed within existing resources. See the "Fiscal Impact Statement" for details.

The bill takes effect July 1, 2022.

II. Present Situation:

Federal Aviation Administration Certification

Electric VTOL aircraft use in the public arena is being pursued by a number of business entities, in the United States and elsewhere. The ability of these aircraft to hover, take-off, and land without the use of a runway offers an additional option for mobility, and eVTOL aircraft offer additional environmental benefits, such as reduced air pollutants. This type of aircraft, however, remains in the development stage. To date, the Federal Aviation Administration (FAA) has not certified any eVTOL aircraft for commercial passenger transportation. As described by one pilot author, certification has been the "elephant in the room" for any company competing to get into the air taxi business.[1]

The FAA has entered into agreements with eVTOL aircraft developers which set out what are known as G1 certification conditions their aircraft must meet to be certified for commercial operations.[2] However, whether any eVTOL aircraft is nearing actual FAA certification is unclear, as the G1 certification is just an initial phase of the process.[3] One company undergoing the process asserts that the industry still has "several years of aircraft testing ahead of us."[4]

On the other hand, another company has announced aggressive plans to establish a regional air mobility network in Lake Nona, Florida, by 2025 in partnership with the City of Orlando, using the company's high-speed eVTOL jet aircraft. The company intends to establish a network of "vertiports,"[5] allowing the connection of "more than 20 million Floridians within a 186-mile

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[1] *See* evtol.com, *EASA and FAA eVTOL standards: Two approaches, one objective*, available at https://evtol.com/opinions/easa-faa-evtol-standards/ (last visited January 28, 2022).
[2] *See* Aviation Today, *Joby Agrees to eVTOL Certification requirements with the FAA*, February 9, 2021, *available at* Joby Agrees to eVTOL Certification Requirements with FAA - Aviation Today; CompositesWorld, *FAA approves G-1 Certification Bases for Archer*, September 9, 2021, *available at* FAA approves G-1 Certification Basis for Archer | CompositesWorld; and lilium.com, *Certifying the Lilium Jet and its operations*, under "Aircraft Certification," *available at Certifying the Lilium Jet and its operations* (last visited January 28, 2022).
[3] *See* evtol.com, *Archer claims to have FAA certification basis for its eVTOL aircraft*, September 7, 2021, *available at https://evtol.com/news/archer-secures-faa-certification-basis-for-its-evtol-aircraft/* (last visited January 28, 2022).
[4] *See* CompositesWorld, *Joby Aviation accelerates eVTOL aircraft certification*, February 9, 2021 (last visited January 28, 2022).
[5] "A type of airport for aircrafts which land and take off vertically." *See* The Free Dictionary, *available at* Vertiport - definition of vertiport by The Free Dictionary (last visited January 28, 2022).

radius, serving several major cities including Orlando and Tampa [6] A visual graphic of the proposed network suggests eventually-intended location of vertiports over a broad swath of the entire state.[7] The company reportedly has plans to offer "a 24-minute trip for $170."[8]

Whether FAA certification of VTOL aircraft for commercial passenger transportation is imminent may be unclear, but at least one company is actively engaged in seeking to establish a network here in Florida using eVTOL aircraft. Additionally, Miami-Dade County is reportedly working on development of an implementation plan for an Urban Air Mobility System "to accommodate in-city airborne emergency services, traffic monitoring and management, public safety, cargo, and, yes, individual passenger travel and public transport within the county's boundaries."[9]

III. Effect of Proposed Changes:

The bill creates an undesignated section of law creating the Advanced Air Mobility Study Task Force adjunct to the FDOT.[10] The FDOT task force is composed of the following members:

- The FDOT secretary or the secretary's designee, who serves as chair.
- One member of the Senate appointed by the Senate President.
- One member of the House appointed by the House Speaker.
- The executive director of the Florida League of Cities or the director's designee.
- The executive director of the Florida Association of Counties or the director's designee.
- The president of Space Florida or the president's designee.
- Appointed by the Governor:
  - Two members, each representing a different city having a population of more than 250,000 persons.
  - One member representing a city having a population of fewer than 250,000 persons.
  - One member representing a metropolitan planning organization.
  - One member representing the State University System.
  - Three members representing the advanced air mobility industry.
  - One member representing an organization in this state that advocates for persons with disabilities.
  - Two members representing the business community.

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[6] *See* lilium.com, *Lilium partners with Tavistock development and City of Orland to establish first region in the US, available at* Lilium partners with Tavistock development and City of Orlando to establish first region in the US - Lilium (last visited January 28, 2022).
[7] *Id.*
[8] *See* Aviation Today, *Lilium to Launch New Electric Air Mobility Network in Florida*, November 14, 2020, *available at* Lilium to Launch New Electric Air Mobility Network in Florida - Aviation Today (last visited January 28, 2022).
[9] *See* Florida Politics, *Miami-Dade brain trust to examine in-city flying cars, cargo in "Urban Air Mobility System, available at* Miami-Dade brain trust to examine in-city flying cars, cargo in 'Urban Air Mobility System' (floridapolitics.com) (last visited January 28, 2022).
[10] The bill defines the term "task force" as set forth in s. 20.03(8), F.S., which is "an advisory body…created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment." Section 20.052, F.S., specifies requirements for the establishment, evaluation, and maintenance of certain bodies created by specific statutory enactment as an adjunct to an executive agency. Except as otherwise provided in the bill, the bill requires the task force to operate in a manner consistent with s. 20.052, F.S.

- One member representing an organization in this state that advocates for underserved transportation areas.
- One member representing a public airport located in a county having a population of more than 1 million persons.
- One member representing a public airport located in a county having a population of fewer than 1 million persons.

Appointed members serve at the pleasure of the appointing authority and without compensation, but are entitled to receive reimbursement for reasonable and necessary per diem and travel expenses incurred in the performance of their duties. The bill directs the FDOT to provide staff, assistance, and facilities as deemed necessary for the task force to perform its duties and specifies that funding for the task force will be paid from the State Transportation Trust Fund.[11]

The task force is directed to meet at the time and location as determined by the chair, to hold public hearings in locations throughout the state, or by electronic means, such as teleconference, provided that a means for active participation is accommodated. The task force is required to:

- Assess and describe the current state of development of the advanced air mobility industry, specifically, deployment of eVTOL aircraft, defined for purposes of the undesignated section of law as "a type of aircraft that uses electric power to hover, take off, and land vertically without of a runway;"
- Identify federal, state, and local laws, rules, regulations, and other requirements that may impact the development of the advanced air mobility industry in this state, including the potential deployment of eVTOL aircraft and infrastructure;
- Recommend any revisions to current state laws and regulations necessary to facilitate the continued development of the advanced air mobility industry and deployment of eVTOL aircraft and infrastructure in this state; and
- Evaluate potential integration of advanced air mobility into local government transportation plans.

By October 1, 2023, the task force is directed to submit to the Governor, the Senate President, and the House Speaker a report including the information, findings, and recommendations described above, as well as any other relevant material deemed appropriate by the task force. The task force is abolished upon submission of the report.

The undesignated section of law expires on December 31, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[11] This trust fund is created in s. 206.46, F.S.

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:

Private sector members of the task force may incur expenses during the course of participation but are entitled to reimbursement for reasonable and necessary per diem and travel expenses.

C. Government Sector Impact:

Government sector members of the task force may incur expenses during the course of participation but are entitled to reimbursement for reasonable and necessary per diem and travel expenses.

The FDOT will incur expenses associated with:

- Reimbursement of member per diem and travel expenses;
- Providing staff, assistance, and facilities for the task force;
- Conducting public hearings, receiving public comments, and preparing the report.

The total amount of these expenses, to be paid from the State Transportation Trust Fund, is unknown but is expected to be absorbed within the FDOT's existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of law.

IX. Additional Information:

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

CS by Rules on February 15, 2022:
The committee substitute:

- Clarifies that task force reimbursement for per diem and travel must be for reasonable and necessary expenses;
- Revises every occurrence of the term, "VTOL," to "eVTOL," to reflect industry efforts toward development and deployment of *electric* VTOL aircraft;
- Revises the definition of the term, "eVTOL," to add hovering to the definition; and
- Revises the task force's duties to provide additional specificity.

B. Amendments:

None.

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

618000

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 58 - 86

and insert:

are entitled to reimbursement for reasonable and necessary per diem and travel expenses incurred in the performance of their duties as provided in s. 112.061, Florida Statutes.

(4) The Department of Transportation shall provide staff, assistance, and facilities as are deemed necessary for the task force to perform its duties. Funding for the task force shall be paid from the State Transportation Trust Fund.

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(5) The task force shall meet at the time and location as the chair determines. The task force shall hold public hearings and receive public comment in locations throughout this state, or by electronic means such as teleconference, provided that a means for active participation is accommodated.

(6) The task force shall:

(a) Assess and describe the current state of development of the advanced air mobility industry, specifically, the deployment of eVTOL aircraft. As used in this section, the term "eVTOL aircraft" means a type of aircraft that uses electric power to hover, take off, and land vertically without a runway.

(b) Identify federal, state, and local laws, rules, regulations, and other requirements that may impact the development of the advanced air mobility industry in this state, including the potential deployment of eVTOL aircraft and infrastructure.

(c) Recommend any changes to state laws and regulations necessary to facilitate the continued development of the advanced air mobility industry and deployment of eVTOL aircraft and infrastructure in this state.

(d) Evaluate the potential integration of advanced air mobility into local government transportation plans.

(7) By October 1, 2023, the task force shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report including the information, findings, and recommendations required pursuant to subsection (6) and any other relevant material deemed appropriate by the task force. Upon submission of the report, the task force is abolished.

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41
42 ================ T I T L E A M E N D M E N T ================
43 And the title is amended as follows:
44 Delete lines 9 - 14
45 and insert:
46 entitled to certain reimbursement; requiring the
47 department to provide staff, assistance, and
48 facilities; providing for funding for the task force
49 from the State Transportation Trust Fund; specifying
50 duties of the task force and requirements for its
51 meetings; defining the term “eVTOL aircraft”;
52 requiring the task force to submit a certain report to
53 the Governor and the Legislature by a specified date;
54 providing for abolishment of the task force; providing
55 an effective date.

By Senator Harrell

25-00889-22 2022728__

A bill to be entitled

An act relating to advanced air mobility; creating the Advanced Air Mobility Study Task Force adjunct to the Department of Transportation; specifying the composition of the task force; providing that task force members serve at the pleasure of their appointing authority; providing that task force members shall serve without compensation but are entitled to certain reimbursement; specifying duties of the task force; defining the term "VTOL aircraft"; requiring the task force to submit a certain report to the Governor and the Legislature by a specified date; providing for abolishment of the task force; providing for expiration; providing an effective date.

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

Section 1. Advanced Air Mobility Study Task Force.—

(1) The Advanced Air Mobility Study Task Force, a task force as defined in s. 20.03(8), Florida Statutes, is created adjunct to the Department of Transportation. The task force is composed of the following members:

(a) The secretary of the Department of Transportation or the secretary's designee, who shall serve as chair of the task force.

(b) One member of the Senate appointed by the President of the Senate.

(c) One member of the House of Representatives appointed by the Speaker of the House of Representatives.

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

25-00889-22 2022728__

(d) The executive director of the Florida League of Cities or the director's designee.

(e) The executive director of the Florida Association of Counties or the director's designee.

(f) The president of Space Florida or the president's designee.

(g) Appointed by the Governor:

1. Two members, each representing a different city having a population of more than 250,000 persons.

2. One member representing a city having a population of fewer than 250,000 persons.

3. One member representing a metropolitan planning organization.

4. One member representing the State University System.

5. Three members representing the advanced air mobility industry.

6. One member representing an organization in this state which advocates for persons with disabilities.

7. Two members representing the business community.

8. One member representing an organization in this state which advocates for underserved transportation areas.

9. One member representing a public airport located in a county having a population of more than 1 million persons.

10. One member representing a public airport located in a county having a population of fewer than 1 million persons.

(2) Appointed members shall serve at the pleasure of the appointing authority.

(3) Task force members shall serve without compensation but are entitled to receive reimbursement for per diem and travel

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

expenses pursuant to s. 112.061, Florida Statutes.

(4) The task force shall hold public hearings in locations throughout this state, or by electronic means, and receive public comments through a website or by mail. The task force shall:

(a) Assess and describe the current state of development of the advanced air mobility industry, specifically, deployment of VTOL aircraft. As used in this section, the term "VTOL aircraft" means aircraft capable of taking off and landing vertically without use of a runway.

(b) Identify and discuss any federal requirements that must be met for deployment of advanced air mobility in this state.

(c) Recommend any revisions to current state law that may impact the advanced air mobility industry, including, but not limited to, any revisions that would create jurisdictional consistency for advanced air mobility operations throughout this state.

(d) Collaborate with local governments to evaluate potential integration of advanced air mobility into transportation plans. Such collaboration shall be summarized in the report submitted pursuant to subsection (5).

(5) By October 1, 2023, the task force shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report including the information specified in subsection (4), as well as any other relevant material deemed appropriate by the task force. Upon submission of the report, the task force is abolished.

(6) This section expires December 31, 2023.

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

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 2, 2022

Senator Kathleen Passidomo
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Diaz,

I respectfully request that **SB 728 – Advanced Air Mobility** 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,

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*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

SB 728 - Advanced Air Mobility

This bill helps prepare the state for the arrival of aircraft that are capable of taking off and landing vertically without the use of a runway – or "VTOL" aircraft. In an effort to facilitate planning for the arrival of VTOL aircraft, the bill:

- Creates the Advanced Air Mobility Study Task Force adjunct to the Florida Department of Transportation.

- Provides for composition of the task force, including state, local, and industry representatives, as well as representatives of other interested stakeholders, such as the business community.

- Directs the task force to hold public hearings in locations throughout the state, or by electronic means, and receive public comments.

- The task force is specifically directed to:
    - Assess and describe the current state of development of the advanced air mobility industry, specifically, VTOL aircraft.

    - Identify and discuss federal requirements that must be met for deployment of advanced air mobility in this state.

    - Recommend revisions to current law that may impact the advanced air mobility industry, including any revisions that would create jurisdictional consistency for advanced air mobility operations throughout the state.

    - Collaborate with local governments to evaluate potential integration of advanced air mobility into transportation plans and summarize the collaboration.

- By October 1, 2023, the task force is directed to submit to the Governor, the Senate President, and the House Speaker a report including the above-described information, as well as any other relevant material deemed appropriate by the task force.

- The task force is abolished upon submission of the report, and the undesignated section of law expires on December 31, 2023.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

Rules
Committee

728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matthew Land

Phone 850.445.3428

Address 1450 Lincoln Rd. Apt. 307
Street

Email matthew.land@eveair mobility.com

Miami Beach, FL 33139
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:
Eve Air Mobility

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Feb. 15, 2022
Meeting Date

Rules
Committee

728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kyle Shephard

Phone (407) 579-5952

Address 400 S. Orange Ave.
Street

Email kyle.shephard@orlando.gov

Orlando FL 32801
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
City of Orlando

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Feb. 15, 2022
Meeting Date

Rules
Committee

SB 728 Advanced Air Mobility
Bill Number or Topic

Amendment Barcode (if applicable)

Name Eric Prutsman

Phone 850-210-7525

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Street

Email eric@teamj.com

Tallahassee FL 32302
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Florida Airports Council

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

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

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

S-001 (08/10/2021)

The Florida Senate

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02/15/22
Meeting Date

Rules
Committee

728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Anna Grace Lewis

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Address 136 S. Bronough St.
Street

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Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Florida Chamber of Commerce
Autonomous Florida Initiative

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules
Committee

728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Lauren Whritenour

Phone 850 509 3610

Address 108 E. Jefferson St. Suite A
Street

Email Lauren.Claire.Henderson@gmail.com

Tall 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: Supernal / Genesis

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

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 796
INTRODUCER:	Criminal Justice Committee and Senator Bradley
SUBJECT:	Tampering with or Fabricating Physical Evidence
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Fav/CS**
2.	Bond	Cibula	JU	**Favorable**
3.	Cellon	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 796 creates a second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense. The bill ranks the offense as a Level 6 offense in the Offense Severity Ranking Chart (OSRC).

This bill will likely have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2022.

II. Present Situation:

Tampering With or Fabricating Physical Evidence

Section 918.13, F.S., prohibits a person, knowing that a criminal trial or proceeding, or an investigation by a prosecuting authority, law enforcement agency, grand jury, or legislative committee is pending or about to be instituted, from:

- Altering, destroying, concealing, or removing any record, document, or thing with the purpose to impair its verity or availability in the proceeding or investigation, or
- Making, presenting, or using any record, document, or thing, knowing it to be false.

A person convicted of tampering with or fabricating physical evidence commits a third degree felony.[1] Under current law, the criminal penalty does not vary based on the severity of the underlying crime that is being investigated or prosecuted, so, for example, a person convicted of tampering with evidence in a murder investigation is subject to the same penalty as a person that tampers with evidence in a case involving misdemeanor marijuana possession.

A person may be convicted of tampering with evidence only in circumstances where the person has the specific intent to destroy or conceal evidence to such an extent that it is unavailable for trial or investigation.[2]

Capital Offenses

A capital felony is the most serious classification of felony offenses. A capital felony is a crime that is punishable by either death or life imprisonment without the possibility of parole.[3] Currently, first degree murder, capital sexual battery, and certain drug trafficking offenses are capital offenses.[4]

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.[5]

If an offense is unranked, the Criminal Punishment Code specifies a default level on the OSRC depending on the felony degree of the offense. The criminal offense of altering, destroying, or concealing physical evidence is ranked as a Level 3 offense in the OSRC.[6]

III. Effect of Proposed Changes:

The bill creates a new felony offense building upon the current offense of tampering with or fabricating evidence. The new offense provides that tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense is a second degree felony.[7] The bill ranks the new second degree felony offense as a Level 6 in the OSRC.

The bill is effective October 1, 2022.

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[1] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[2] *E.I. v. State*, 25 So. 3d 626 (Fla. 2d DCA 2009).
[3] Section 775.082(1)(a), F.S.
[4] *See* ss. 782.04(2)(a), 794.011(2)(a), and 893.135, F.S.
[5] Section 921.0022(3)(c), F.S.
[6] *Id*.
[7] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.

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 State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered CS/SB 796; however, the Office of Economic and Demographic Research has provided a Proposed Estimate for CS/HB 287 which is identical to CS/SB 796.[8] The Proposed Estimate for CS/HB 287 is that the bill will have a Positive Indeterminate impact (an unquantifiable increase in prison beds) on the Department of Corrections.[9]

VI. Technical Deficiencies:

None.

[8] The Proposed Estimates for CS/HB 287 and SB 796 are on file with the Senate Criminal Justice Committee.
[9] *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 918.13 and 921.0022.

IX. Additional Information:

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

CS by Criminal Justice on January 25, 2022:
The committee substitute:

- Includes s. 918.13(1)(b), F.S., the third degree felony crime of fabricating physical evidence in the Offense Severity Ranking Chart at Level 3.
- Ranks the second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense, or an offense involving the death of a person in the Offense Severity Ranking Chart at Level 6. This offense is created in the bill.
- Deletes a second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a violent felony offense described in s. 775.084(1)(b)1., F.S.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Bradley

591-02277-22 2022796c1

A bill to be entitled

An act relating to tampering with or fabricating physical evidence; amending s. 918.13, F.S.; providing enhanced criminal penalties for tampering with or fabricating physical evidence in certain criminal proceedings and investigations; amending s. 921.0022, F.S.; ranking offenses on the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. Section 918.13, Florida Statutes, is amended to read:

918.13 Tampering with or fabricating physical evidence.—

(1) It is unlawful for any ~~No~~ person, knowing that a criminal trial, ~~or~~ proceeding, or ~~an~~ investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of this state is pending or is about to be instituted, to ~~shall~~:

(a) Alter, destroy, conceal, or remove any record, document, or other item ~~thing~~ with the purpose to impair its verity or availability in such proceeding or investigation; or

(b) Make, present, or use any record, document, or other item ~~thing~~, knowing it to be false.

(2)(a) Except as provided in paragraph (b), a ~~Any~~ person who violates subsection (1) commits ~~any provision of this section shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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591-02277-22 2022796c1

(b) A person who violates subsection (1) relating to a criminal trial, proceeding, or investigation that relates to a capital felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraphs (c) and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

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319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the

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		Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license

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		application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a

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		vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
812.081(2)	3rd	Theft of a trade secret.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.

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817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.
817.49(2)(b)1.	3rd	Willful making of a false report of a crime causing great bodily harm, permanent disfigurement, or permanent disability.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot.
870.01(4)	3rd	Inciting a riot.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s.

		893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.

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893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner’s practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the

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		practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1) ~~918.13(1)(a)~~	3rd	Tampering with or fabricating physical evidence ~~Alter, destroy, or conceal investigation evidence~~.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.

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

985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.

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499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.

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784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.

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790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any

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		other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $750 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

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817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.

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827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with

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		bodily injury.
918.13(2)(b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

Section 3. This act shall take effect October 1, 2022.

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THE FLORIDA SENATE
Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

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 8, 2022

Senator Kathleen Passidomo, Chair
Senate Committee on Rules
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/SB 796 be placed on the committee's agenda at your earliest convenience. This bill relates to tampering with or fabricating physical evidence. This bill increases the potential penalties for individuals who tamper with or fabricate evidence in investigations or trials involving capital crimes (such as 1st degree murder and capital sexual battery) by making that offense a 2nd degree felony instead of a 3rd.

Thank you for your consideration.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: John B. Phelps, Staff Director
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*

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 876
INTRODUCER:	Rules Committee; Criminal Justice Committee; Transportation Committee; and Senators Pizzo and Rodrigues
SUBJECT:	Stunt Driving on Highways
DATE:	February 15, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Fav/CS**
2.	Stokes	Jones	CJ	**Fav/CS**
3.	Proctor	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 876 defines various terms, including street takeover and stunt driving. A "street takeover" is defined as the taking over of a portion of a highway or roadway by blocking or impeding the regular flow of traffic to perform burnouts, doughnuts, drifting, wheelies, or other stunt driving. "Stunt driving" means to perform or engage in any burnouts, doughnuts, drifting, wheelies, or other activity on a roadway or highway which is likely to delay, distract, startle, or interfere with other users of the roadway or highway.

The bill provides that it is a noncriminal traffic infraction for a person to be a spectator at any street takeover. Additionally, evidence that a person is filming or recording the event, or posting the event on social media, may be used to prove that a person was a spectator.

The bill amends s. 316.191, F.S., relating to racing on highways, to create three new first degree misdemeanor offenses. Specifically, a person may not:

- Operate a vehicle for the purpose of filming or recording the activities of participants in any race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition. There is an exception for bona fide members of the news media.
- Operate a vehicle carrying any amount of fuel for the purposes of fueling a vehicle involved in any race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; or
- Operate a vehicle in a manner that would constitute participation in a street takeover.

Additionally, the bill adds drag racing, street takeovers, and stunt driving to the current list of prohibited acts that constitute a first degree misdemeanor. The bill also adds specified vehicles that may not be driven at certain events.

The bill amends s. 318.18, F.S., to add street takeovers and stunt driving on highways to the list of criminal offenses which would require a $65 penalty, in addition to any other penalty. The additional $65 must be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health.

Additionally, the bill provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe a person has committed a street takeover or stunt driving.

The bill may have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill has an effective date of October 1, 2022.

II. Present Situation:

Under current law a person is prohibited from driving any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot. In addition, a person is prohibited from participating in, coordinating, facilitating, or collecting moneys at any location for any such event; knowingly riding as a passenger in any such event; or purposefully causing the movement of traffic to slow or stop for any such event.[1]

Any person who violates the above provisions commits a first degree misdemeanor,[2] must also pay a fine of not less than $500 and not more than $1,000, and the Department of Highway Safety and Motor Vehicles (DHSMV) must also revoke his or her driver license for one year.[3]

Any person who commits a second violation of the above provisions within five years of a prior conviction commits a first degree misdemeanor, must pay a fine of not less than $1,000 and not more than $3,000, and the DHSMV must also revoke his or her driver license for two years.[4]

Any person who commits a third or subsequent violation of the above provisions within five years of a prior conviction commits a first degree misdemeanor, must pay a fine of not less than $2,000 and not more than $5,000, and the DHSMV must also revoke his or her driver license for four years.[5]

[1] Section 316.191(2), F.S.
[2] A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding $1,000. Sections 775.082 and 775.083, F.S.
[3] Section 316.191(3), F.S.
[4] *Ibid*.
[5] *Ibid*.

A person who has had his or her driver license revoked may request a hearing pursuant to s. 322.271, F.S., to petition the DHSMV for reinstatement of driving privileges for the above revocations.[6]

Whenever a law enforcement officer has probable cause to believe that a person commits any of the above violations, the law enforcement officer may arrest and take the person into custody without a warrant, and the court may enter an order of impoundment or immobilization as a condition of incarceration or probation. Within seven business days after the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the motor vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the motor vehicle.[7]

In addition, a person who is a spectator at a prohibited drag race under this section commits a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S.[8]

Street Takeover

Street takeovers are a relatively recent phenomenon that occur when large numbers, sometimes hundreds, of cars gather at a predetermined site, typically a large intersection. Some of the cars are used to block off the intersection and then other cars come into that intersection to perform donuts and other types of vehicular stunts. The problem with controlling these events is that it takes time for law enforcement to arrive because, due to the size and scale of these gatherings, multiple law enforcement resources need to be coordinated before they can take action. Once the first sign of law enforcement presence is detected, the participants scatter, including the many bystanders that come to watch the cars.[9]

There does not appear to be much governmental data or statistics associated with street takeovers; however, there are a number of media accounts from across the nation, including Orange and Miami-Dade counties in Florida. Numerous media accounts indicate that a significant number of injuries and fatalities have been associated with street takeovers.[10]

III. Effect of Proposed Changes:

The bill amends s. 316.191(1), F.S., to add the following definitions:

- "Burnout" means a maneuver performed while operating a motor vehicle whereby the vehicle is kept stationary, or is in motion, while the wheels are spun, the resulting friction causing the vehicle's tires to heat up and emit smoke.
- "Doughnut" means a maneuver performed while operating a motor vehicle whereby the front or rear of the vehicle is rotated around the opposite set of wheels in a continuous motion

[6] *Ibid*.
[7] Section 316.191(5), F.S.
[8] Section 316.191(4), F.S.; Section 318.18, F.S., provides, that in addition to any other penalty, a person must pay $65 for a violation of s. 316.191, F.S.
[9] Thom Taylor, *Street Takeovers Are Turning More Deadly*, November 15, 2021, motorbiscuit.com, https://www.motorbiscuit.com/street-takeovers-turning-more-deadly/ (last visited January 27, 2022).
[10] *Ibid*; Erin Myers, *Car that crashed into Van Nuys building, killing 1, was being followed by police after doing donuts in street takeover*, October 25, 2021, ktla.com, https://ktla.com/news/local-news/car-that-crashed-into-van-nuys-building-killing-1-was-being-followed-by-police-after-doing-donuts-in-street-takeover/ (last visited January 27, 2022).

which may cause a circular skid-mark pattern of rubber on the driving surface or the tires to heat up and emit smoke from friction, or both.

- "Drifting" means a maneuver performed while operating a motor vehicle whereby the vehicle is steered so that it makes a controlled skid sideways through a turn with the front wheels pointed in a direction opposite to that of the turn.
- "Street takeover" means the taking over of a portion of a highway or roadway by blocking or impeding the regular flow of traffic to perform burnouts, doughnuts, drifting, wheelies, or other stunt driving.
- "Stunt driving" means to perform or engage in any burnouts, doughnuts, drifting, wheelies, or other activity on a roadway or highway which is likely to delay, distract, startle, or interfere with other users of the roadway or highway.
- "Wheelie" means a maneuver performed while operating a motor vehicle whereby a motorcycle or other motor vehicle is ridden for a distance with the front wheel or wheels raised off the ground.

The bill amends the term "spectator" to include a person who is knowingly present at and views a street takeover. The new definition now means any person who is knowingly present at and views a drag race or street takeover, when such presence is the result of an affirmative choice to attend or participate in the event. For purposes of determining whether or not an individual is a spectator, finders of fact shall consider the relationship between the motor vehicle operator and the individual, evidence of gambling or betting on the outcome of the event, filming or recording the event, or posting the event to social media, and any other factor that would tend to show knowing attendance or participation.

The bill amends s. 316.191(4), F.S., to provide that a person may not be a spectator at a street takeover and a person who violates this provision commits a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S.

The bill amends s. 316.191(2), F.S., relating to racing on highways, to create three new first degree misdemeanor offenses. Specifically, a person may not:

- Operate a vehicle for the purpose of filming or recording the activities of participants in any race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition. There is an exception for bona fide members of the news media.
- Operate a vehicle carrying any amount of fuel for the purposes of fueling a vehicle involved in any race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; or
- Operate a vehicle in a manner that would constitute participation in a street takeover.

Additionally, the bill adds drag racing, street takeovers, and stunt driving to the current list of prohibited acts that constitute a first degree misdemeanor. The bill also adds specified vehicles that may not be driven at certain events. Specifically, the bill provides that a person may not:

- Drive any motor vehicle, motorcycle, autocycle, moped, all-terrain vehicle, off-road vehicle, or vehicle not licensed to operate on a highway or roadway, in any street takeover, stunt driving, race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record

or exhibiting the vehicle's performance capabilities and driver's abilities on any highway, roadway, or parking lot;
- Participate, coordinate through social media or otherwise, facilitate, or collect moneys, in a drag race, street takeover, or stunt driving;
- Knowingly ride as a passenger in a drag race, street takeover, or stunt driving;
- Cause the movement of traffic, including pedestrian traffic, to slow, stop, or be impeded in any way for a drag race, street takeover, or stunt driving.

Any person who violates the above provisions commits a first degree misdemeanor, must pay a fine of not less than $500 and not more than $1,000, and the DHSMV must also revoke his or her driver license for one year.

Any person who commits a second violation of the above provisions within five years after the date of a prior violation that resulted in a conviction commits a first degree misdemeanor, must pay a fine of not less than $1,000 and not more than $3,000, and the DHSMV must also revoke his or her driver license for two years.

Any person who commits a third or subsequent violation of the above provisions within five years after the date of a prior violation that resulted in a conviction commits a first degree misdemeanor, must pay a fine of not less than $2,000 and not more than $5,000, and the DHSMV must also revoke his or her driver license for four years.

A hearing may be requested pursuant to s. 322.271, F.S., to petition the DHSMV for reinstatement of driving privileges for the above revocations.

The bill amends s. 901.15(9), F.S., to include a street takeover and stunt driving as incidents when a law enforcement officer may arrest a person without a warrant.

The bill amends s. 318.18(20), F.S., to add street takeovers and stunt driving on highways to the list of criminal offenses which would require a $65 penalty, in addition to any other penalty. The additional $65 must be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health.

The bill has an effective date of October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals driving, participating, coordinating, facilitating, collecting money, knowingly riding as a passenger, or causing the movement of traffic to slow or stop for a street takeover or stunt driving event may be negatively impacted if they are fined, arrested, have their vehicle impounded, or have their driver license revoked.

Individual spectators of a street takeover event may be negatively impacted if they are cited with a noncriminal traffic infraction.

C. Government Sector Impact:

State and local government entities may see an indeterminate positive fiscal impact associated with any fines or fees collected from individuals driving, participating, coordinating, facilitating, collecting money, knowingly riding as a passenger, or causing the movement of traffic to slow or stop for a street takeover or stunt driving event, and from the impoundment of vehicles.

State and local government may see an indeterminate positive fiscal impact associated with the issuance of a noncriminal traffic infraction to spectators of a street takeover.

The Emergency Medical Services Trust Fund of the Department of Health may see an indeterminate positive fiscal impact due to the addition of street takeovers and stunt driving on highways to the list of criminal offenses which would require a $65 penalty, in addition to any other penalty, under s. 318.18(20), F.S.

There may be an indeterminate positive fiscal (increase in jail beds) due to persons arrested for the crimes created in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.191, 318.18, and 901.15.

This bill reenacts sections 316.027 and 322.0261 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules on February 15, 2022:
The committee substitute removes the enhanced penalty under s. 316.2397, F.S., relating to the prohibition of certain lights on a vehicle, from a noncriminal traffic infraction to a first degree misdemeanor, and removes the prohibition for falsely assuming or pretending to be specified persons by the use of certain lights.

CS/CS by Criminal Justice on February 1, 2022:
The committee substitute:

- Adds autocycle, moped, all-terrain vehicle, off-road vehicle, and a vehicle not licensed to operate on a highway or roadway to the list of vehicles that may not be driven in certain events.
- Provides that evidence of the filming or recording of a drag race or street takeover, or posting of such event on social media, may be used to determine if a person was a spectator at such event. There is an exception for bona fide members of the news media.
- Prohibits a person from operating a vehicle: for the purpose of filming or recording the activities of participants of certain events; carrying any amount of fuel for the purpose of fueling a vehicle involved in certain events; or in a manner that would constitute participation in a street takeover.
- Enhances the penalty under s. 316.2397, F.S., relating to the prohibition of certain lights on a vehicle, from a noncriminal traffic infraction to a first degree misdemeanor, and prohibits a person from falsely assuming or pretending to be specified persons by the use of certain lights.

CS by Transportation on January 12, 2022:
The committee substitute:

- Modifies the definition of "burnout" to allow the vehicle to also be in motion, and not just stationary.

- Amends the definition for "spectator" to include an individual present at and viewing a street takeover event.

B. Amendments:

None.

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

546672

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Pizzo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 206 - 257
and insert:
Section 2. Subsection (20) of section 318.18, Florida Statutes, is amended to read:
318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:
(20) In addition to any other penalty, $65 for a violation of s. 316.191, prohibiting racing on highways, street takeovers,

546672

and stunt driving on highways, or s. 316.192, prohibiting reckless driving. The additional $65 collected under this subsection shall be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health to be used as provided in s. 395.4036.

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

And the title is amended as follows:

Delete lines 13 - 19

and insert:

amending s. 318.18, F.S.; providing applicability of a certain civil penalty; amending s.

By the Committees on Criminal Justice; and Transportation; and Senators Pizzo and Rodrigues

591-02598-22 2022876c2

A bill to be entitled

An act relating to stunt driving on highways; amending s. 316.191, F.S.; defining terms; revising the definition of the term "spectator"; prohibiting specified acts relating to street takeovers or stunt driving on highways, roadways, or parking lots; prohibiting the operation of a vehicle for specified purposes; providing an exception; prohibiting the operation of a vehicle in a manner that would constitute a street takeover; prohibiting a person from being a spectator at a street takeover; providing applicability of specified criminal penalties; amending s. 316.2397, F.S.; providing criminal penalties for unlawful use of certain lights; amending s. 318.18, F.S.; providing applicability of a certain civil penalty; amending s. 843.08, F.S.; prohibiting a person from falsely assuming or pretending to be specified persons by the unlawful use of certain lights; providing criminal penalties; amending s. 901.15, F.S.; conforming a provision to changes made by the act; reenacting ss. 316.027(2)(c) and 322.0261(4)(a) and (b), F.S., relating to crashes involving death or personal injuries and driver improvement courses, respectively, to incorporate the amendment made to s. 316.191, F.S., in references thereto; providing an effective date.

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

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

591-02598-22 2022876c2

Section 1. Section 316.191, Florida Statutes, is amended to read:

316.191 Racing on highways, street takeovers, and stunt driving on highways.—

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

(a) "Burnout" means a maneuver performed while operating a motor vehicle whereby the vehicle is kept stationary, or is in motion, while the wheels are spun, the resulting friction causing the vehicle's tires to heat up and emit smoke.

(b) "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(c) "Doughnut" means a maneuver performed while operating a motor vehicle whereby the front or rear of the vehicle is rotated around the opposite set of wheels in a continuous motion which may cause a circular skid-mark pattern of rubber on the driving surface or the tires to heat up and emit smoke from friction, or both.

(d) ~~(b)~~ "Drag race" means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit.

(e) "Drifting" means a maneuver performed while operating a motor vehicle whereby the vehicle is steered so that it makes a controlled skid sideways through a turn with the front wheels

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

pointed in a direction opposite to that of the turn.

(f)~~(e)~~ "Race" means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race.

(g)~~(d)~~ "Spectator" means any person who is knowingly present at and views a drag race or street takeover, when such presence is the result of an affirmative choice to attend or participate in the event ~~race~~. For purposes of determining whether or not an individual is a spectator, finders of fact shall consider the relationship between the motor vehicle operator ~~racer~~ and the individual, evidence of gambling or betting on the outcome of the event ~~race~~, filming or recording the event, or posting the event on social media, and any other factor that would tend to show knowing attendance or participation.

(h) "Street takeover" means the taking over of a portion of a highway or roadway by blocking or impeding the regular flow of traffic to perform burnouts, doughnuts, drifting, wheelies, or other stunt driving.

(i) "Stunt driving" means to perform or engage in any burnouts, doughnuts, drifting, wheelies, or other activity on a roadway or highway which is likely to delay, distract, startle, or interfere with other users of the roadway or highway.

(j) "Wheelie" means a maneuver performed while operating a motor vehicle whereby a motorcycle or other motor vehicle is ridden for a distance with the front wheel or wheels raised off the ground.

(2) A person may not:

(a) Drive any motor vehicle, including any motorcycle, autocycle, moped, all-terrain vehicle, off-road vehicle, or vehicle not licensed to operate on a highway or roadway, in any street takeover, stunt driving, race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record or exhibiting the vehicle's performance capabilities and driver's abilities on any highway, roadway, or parking lot;

(b) In any manner participate in, coordinate through social media or otherwise, facilitate, or collect moneys at any location for any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition;

(c) Knowingly ride as a passenger in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; ~~or~~

(d) Purposefully cause the movement of traffic, including pedestrian traffic, to slow, ~~or~~ stop, or be impeded in any way for any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition;

(e) Operate a vehicle for the purpose of filming or recording the activities of participants in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition. This paragraph does not apply to bona fide members of the news media;

(f) Operate a vehicle carrying any amount of fuel for the purposes of fueling a vehicle involved in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; or

(g) Operate a vehicle in a manner that would constitute participation in a street takeover.

(3)(a) Any person who violates subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates subsection (2) shall pay a fine of not less than $500 and not more than $1,000, and the department shall revoke the driver license of a person so convicted for 1 year. A hearing may be requested pursuant to s. 322.271.

(b) Any person who commits a second violation of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall pay a fine of not less than $1,000 and not more than $3,000. The department shall also revoke the driver license of that person for 2 years. A hearing may be requested pursuant to s. 322.271.

(c) Any person who commits a third or subsequent violation of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of

subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall pay a fine of not less than $2,000 and not more than $5,000. The department shall also revoke the driver license of that person for 4 years. A hearing may be requested pursuant to s. 322.271.

(d) In any case charging a violation of subsection (2), the court shall be provided a copy of the driving record of the person charged and may obtain any records from any other source to determine if one or more prior convictions of the person for a violation of subsection (2) have occurred within 5 years prior to the charged offense.

(4)(a) A person may not be a spectator at any race, drag race, or street takeover prohibited under subsection (2).

(b) A person who violates paragraph (a) commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(5) Whenever a law enforcement officer has probable cause to believe that a person violated subsection (2), the officer may arrest and take such person into custody without a warrant. The court may enter an order of impoundment or immobilization as a condition of incarceration or probation. Within 7 business days after the date the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the motor vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the motor vehicle.

(a) Notwithstanding any provision of law to the contrary, the impounding agency shall release a motor vehicle under the

conditions provided in s. 316.193(6)(e), (f), (g), and (h), if the owner or agent presents a valid driver license at the time of pickup of the motor vehicle.

(b) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the motor vehicle or, if the motor vehicle is leased or rented, by the person leasing or renting the motor vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 shall apply.

(c) Any motor vehicle used in violation of subsection (2) may be impounded for a period of 30 business days if a law enforcement officer has arrested and taken a person into custody pursuant to this subsection and the person being arrested is the registered owner or co-owner of the motor vehicle. If the arresting officer finds that the criteria of this paragraph are met, the officer may immediately impound the motor vehicle. The law enforcement officer shall notify the Department of Highway Safety and Motor Vehicles of any impoundment for violation of this subsection in accordance with procedures established by the department. Paragraphs (a) and (b) shall be applicable to such impoundment.

(6) Any motor vehicle used in violation of subsection (2) by any person within 5 years after the date of a prior conviction of that person for a violation under subsection (2) may be seized and forfeited as provided by the Florida Contraband Forfeiture Act. This subsection shall only be applicable if the owner of the motor vehicle is the person charged with violating subsection (2).

(7) This section does not apply to licensed or duly

authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.

Section 2. Subsection (10) of section 316.2397, Florida Statutes, is amended to read:

316.2397 Certain lights prohibited; exceptions.—

(10) A person who violates ~~violation of~~ this section commits a misdemeanor of the first degree ~~is a noncriminal traffic infraction~~, punishable ~~as a nonmoving violation~~ as provided in s. 775.082 or s. 775.083 ~~chapter 318~~.

Section 3. Subsection (20) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(20) In addition to any other penalty, $65 for a violation of s. 316.191, prohibiting racing on highways, street takeovers, and stunt driving on highways, or s. 316.192, prohibiting reckless driving. The additional $65 collected under this subsection shall be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health to be used as provided in s. 395.4036.

Section 4. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, an officer of the Department of Environmental Protection, an officer of the Department of Financial Services, any personnel or representative of the

Division of Investigative and Forensic Services, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s. 30.15(1)(k), a security officer licensed under chapter 493, any member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission, any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, including by using lights in violation of s. 316.2397 or s. 843.081, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Paragraph (d) of subsection (9) of section 901.15, Florida Statutes, is amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant

when:

(9) There is probable cause to believe that the person has committed:

(d) A racing, street takeover, or stunt driving violation as described in s. 316.191(2).

Section 6. For the purpose of incorporating the amendment made by this act to section 316.191, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 316.027, Florida Statutes, is reenacted to read:

316.027 Crash involving death or personal injuries.—

(2)

(c) The driver of a vehicle involved in a crash occurring on public or private property which results in the death of a person shall immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and shall remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. A person who is arrested for a violation of this paragraph and who has previously been convicted of a violation of this section, s. 316.061, s. 316.191, or s. 316.193, or a felony violation of s. 322.34, shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903. A person who willfully violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall be sentenced to a mandatory minimum term of imprisonment of 4 years. A person who willfully commits such a violation while driving under the influence as set forth in s. 316.193(1) shall be sentenced to a mandatory minimum term of imprisonment of 4 years.

Section 7. For the purpose of incorporating the amendment made by this act to section 316.191, Florida Statutes, in references thereto, paragraphs (a) and (b) of subsection (4) of section 322.0261, Florida Statutes, are reenacted to read:

322.0261 Driver improvement course; requirement to maintain driving privileges; failure to complete; department approval of course.—

(4)(a) The department shall identify any operator convicted of, or who pleaded nolo contendere to, a violation of s. 316.074(1), s. 316.075(1)(c)1., s. 316.172, s. 316.191, or s. 316.192 and shall require that operator, in addition to other applicable penalties, to attend a department-approved driver improvement course in order to maintain driving privileges. The department shall, within 10 days after receiving a notice of judicial disposition, send notice to the operator of the requirement to attend a driver improvement course. If the operator fails to complete the course within 90 days after receiving notice from the department, the operator's driver license shall be canceled by the department until the course is successfully completed.

(b) Any operator who receives a traffic citation for a violation of s. 316.074(1), s. 316.075(1)(c)1., s. 316.191, or s. 316.192, for which the court withholds adjudication, is not required to attend a driver improvement course, unless the court finds that the nature or severity of the violation is such that attendance to a driver improvement course is necessary. The department shall, within 10 days after receiving a notice of judicial disposition, send notice to the operator of the requirement to attend a driver improvement course. If the

operator fails to complete the course within 90 days after receiving notice from the department, the operator's driver license shall be canceled by the department until the course is successfully completed.

Section 8. This act shall take effect October 1, 2022.

The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 2, 2022

I respectfully request that **CS/CS/SB 876**, relating to Stunt Driving on Highways, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

CS/CS/SB 876 addresses the issues of stunt driving and street takeovers, a relatively recent phenomenon, that occur when large numbers of cars gather at a predetermined site, usually a large intersection. Some cars block off the intersection so that other cars can then enter the intersection to perform burnouts, doughnuts, drifting, wheelies, and/or other vehicular stunts. These street takeovers block or impede the regular flow of traffic and can delay, distract, startle, or interfere with other vehicles using the roadways and highways. They have also resulted in injuries and deaths, including the decapitation of a passenger. The bill also addresses the issue of spectators who often document these events for social media, which has made this not just a local issue but also a statewide and national issue as well.

Senator Jason W. B. Pizzo
Florida Senate, District 38

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

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

2/15/2022
Meeting Date

Rules
Committee

876
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Dunagan **Phone** 850-877-2165

Address 2617 Mahan Drive **Email** mdunagan@flsheriffs.org
Street

Tallahassee FL 32308
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 Sheriffs Association

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

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 892
INTRODUCER:	Senator Burgess
SUBJECT:	Charter School Charters
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	**Favorable**
2.	Hackett	Ryon	CA	**Favorable**
3.	Jahnke	Phelps	RC	**Favorable**

I. Summary:

SB 892 revises provisions related to consolidating two or more charter schools, and modifying the procedures and notification timeframe for terminating or nonrenewing a charter. Specifically the bill:

- Provides that a charter may be modified at any time rather than only during its initial or renewal term.
- Requires that a request for the consolidation of multiple charters be approved or denied within 60 days after submission of the request.
- Requires that any sponsor who denies a request for consolidation must provide the charter school's governing board with the specific reasons for the denial within 10 days.
- Specifies that a sponsor provide notice to a charter school of a decision to renew, terminate, or not renew before a vote and at least 90 days before the end of the school year.
- Provides for the automatic renewal of a charter if a vote proposed on the action does not occur at least 90 days before the end of the school year.

The bill does not appear to have a fiscal impact.

The bill takes effect July 1, 2022.

II. Present Situation:

Charter Schools

Charter schools are tuition-free public schools created through an agreement or "charter" that provides flexibility relative to regulations created for traditional public schools.[1] Forty-five states

[1] Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (September 2021), *available at* https://www.fldoe.org/core/fileparse.php/7778/urlt/Charter-Sept-2021.pdf.

and the District of Columbia have enacted charter school laws as of January 2020.[2] Nationally, between the 2009-2010 and 2018-2019 school years, the percentage of all public schools that were charter schools increased from five to eight percent, and the total number of charter schools increased from 5,000 to 7,400. The percentage of public school students nationwide attending public charter schools increased from three to seven percent between fall 2009 and fall 2018.[3]

All charter schools in Florida are public schools and are part of the state's public education system.[4] During the 2020-2021 school year, 341,926 students were enrolled in 687 charter schools in Florida.[5] Seventy percent of the students attending charter schools in the 2020-2021 school year were minorities. Hispanic students comprised 45 percent of Florida's charter school enrollment, and 19 percent were African-American students.[6]

Charter School Sponsors

A district school board may sponsor a charter school in the county over which the district school board has jurisdiction.[7] A state university may sponsor a charter developmental research school (charter lab school) [8] and upon the approval by the State Board of Education (SBE), may sponsor a charter school to meet regional education or workforce demands by serving students from multiple school districts.[9] Additionally, Florida College System (FCS) institutions, upon the approval of the SBE, may sponsor a charter school in any county within its service area to meet workforce demands and may offer postsecondary programs leading to industry certification to eligible charter school students.[10]

A charter school sponsor has several responsibilities, including:[11]

- Approving or denying charter school applications.
- Overseeing each sponsored school's progress toward the goals established in the charter.
- Monitoring the revenues and expenditures of the school.
- Ensuring that the school participates in the state's education accountability system.
- Intervening when a sponsored school demonstrates deficient student performance or financial instability.

[2] Education Commission of the States, *50-State Comparison: Charter School Policies* https://www.ecs.org/charter-school-policies/ (last visited January 20, 2022).
[3] National Center for Education Statistics, *Public Charter School Enrollment*, https://nces.ed.gov/programs/coe/indicator/cgb (last visited January 20, 2022).
[4] Section 1002.33(1), F.S.
[5] Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (September 2021), *available at* https://www.fldoe.org/core/fileparse.php/7778/urlt/Charter-Sept-2021.pdf.
[6] *Id.*
[7] Section 1002.33(5)(a)1., F.S.
[8] Section 1002.33(5)(a)2., F.S.
[9] Section 1002.33(5)(a)3., F.S.
[10] A charter school currently operated by an FCS institution is not eligible to be sponsored by an FCS institution until its existing charter with the school district expires. Section 1002.33(5)(a)3.b., F.S. and Section 1002.34(3)(b), F.S.
[11] Section 1002.33(5)(b), F.S.

A sponsor must provide administrative and educational services[12] and may withhold a fee of up to five percent of each charter school's total operating funds.[13]

Charter School Applications

An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under the laws of this state.[14] A sponsor receives and reviews all charter school applications using the evaluation instrument developed by the Department of Education and, within 90 calendar days of receipt, must by majority vote approve or deny the application. A sponsor must receive and consider charter school applications received for charter schools to be opened at a time determined by the applicant.[15]

If an application is denied, the sponsor must within ten calendar days provide specific written reasons, based upon good cause, for its denial to the applicant and the DOE.[16] The applicant has 30 calendar days to file an appeal with the SBE after the denial of or failure to act upon an application. The state board's decision is a final action subject to judicial review in the District Court of Appeal.[17]

Charter Agreement

The terms and conditions for the operation of a charter school are set forth by the sponsor and the charter school applicant in a contractual agreement called the charter.[18] The initial term of the charter is for 5 years, excluding two planning years.[19] The charter may be renewed under a 15-year charter if the charter school has been operating for a minimum of 3 years and is demonstrating exemplary academic programming and fiscal management.[20] The 15-year charter must be granted to a charter school that has received a school grade of "A" or "B" in 3 of the past 4 years and is not in a state of financial emergency.[21]

The charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor or the charter school's governing board and the approval of both parties to the agreement.[22] Changes to curriculum which are consistent with state standards are

[12] Administrative and educational services include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the National School Lunch Program; test administration services; processing of teacher certificate data services; and information services. Section 1002.33(20)(a)1., F.S.
[13] Section 1002.33(20)(a)2., F.S.
[14] Section 1002.33(3)(a), F.S.
[15] Section 1002.33(6)(b), F.S.
[16] Section 1002.33(6)(b)3.a.,F.S.
[17] Section 1002.33(6)(c)-(d), F.S.; *see also* s. 120.68, F.S.
[18] Section 1002.33(7), F.S. The standard charter school contract is incorporated into SBE Rule 6A-6.0786, F.A.C.
[19] Section 1002.33(7)(a)12., F.S. Charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the sponsor. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the sponsor.
[20] Section 1002.33(7)(c)1., F.S.
[21] Section 1002.33(7)(c)2., F.S.
[22] Section 1002.33(7)(d), F.S.

deemed approved unless the sponsor and the DOE determine in writing that the curriculum is inconsistent with state standards.[23] Modification during any term may include, but is not limited to, consolidation of multiple charters into a single charter if the charters are operated under the same governing board, regardless of the renewal cycle.[24] The charter may be renewed at the end of its term if a program review conducted by the sponsor demonstrates that the goals and criteria stated in the charter have been met and that no grounds for nonrenewal have occurred.[25]

Sponsor Nonrenewal or Termination of a Charter

A charter school sponsor must make student academic achievement for all students the most important factor when determining whether to renew or terminate a charter, but may terminate or not renew a charter for any of the following reasons: [26]

- Failure to participate in the state's education accountability system or failure to meet the charter's requirements for student performance.
- Failure to meet generally accepted standards of fiscal management.
- Material violation of law.
- Other good cause shown.

A sponsor must provide 90-days written notice to the charter school prior to termination or nonrenewal of the charter. The notice must state in reasonable detail the grounds for the proposed action and stipulate that the school's governing board may, within 14 calendar days after receiving the notice, request an administrative hearing.

A charter may be terminated immediately if the sponsor sets forth particular facts and circumstances indicating an immediate and serious danger to the health, safety or welfare of the students.[27]The sponsor must notify in writing the charter school's governing board, the charter school principal, and the DOE of an immediate termination. The sponsor must clearly identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues resulting in the immediate termination, if applicable. The decision by the sponsor to immediately terminate a charter is subject to an administrative hearing.[28]

III. Effect of Proposed Changes:

SB 892 modifies s. 1002.33, F.S., to provide that a charter may be modified at any time rather than only during its initial or renewal term as currently provided for in law. The bill requires that a request for the consolidation of multiple charters be approved or denied within 60 days after submission of the request. Additionally, if a consolidation request is denied by the charter school sponsor, the bill requires the sponsor to notify the charter school's governing board of the denial within 10 days, and to provide the specific reasons for the denial.

[23] *Id.*
[24] *Id.*
[25] Section 1002.33(7)(c)1., F.S.
[26] Section 1002.33(8)(a)1.-4., F.S.
[27] Section 1002.33(8)(b) and (c), F.S.
[28] Section 1002.33(8)(c), F.S. The sponsor must assume operation of the charter school, unless the continued operation of the charter school would materially threaten the health, safety, or welfare of the students.

The bill modifies the 90-day notification requirement to renew, terminate, or not renew a charter. The bill requires a sponsor to notify a charter school's governing board, in writing, of any proposed action to renew, terminate, or not renew a charter school's charter before a vote on the proposed action and at least 90 days before the end of the school year. The bill provides for the automatic renewal of a charter, under the existing terms and conditions, if a vote on the proposed action does not occur at least 90 days before the end of the school year. Specifying the 90-day notification deadline before the end of the school year may provide additional time for the charter school and sponsor to resolve issues without impacting students.

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 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 section 1002.33 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Burgess

20-01034-22 2022892__

A bill to be entitled

An act relating to charter school charters; amending s. 1002.33, F.S.; requiring a request for a consolidation of multiple charters to be approved or denied within a specified timeframe; requiring a charter school sponsor to provide to the charter school specified information relating to a denial of a request for a consolidation within a certain timeframe; revising the time period for notification of specified actions relating to a charter school charter; providing for the automatic renewal of a charter under certain circumstances; providing an effective date.

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

Section 1. Paragraph (d) of subsection (7) and paragraph (b) of subsection (8) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(7) CHARTER.—The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The sponsor and the governing board of the charter school shall use the standard charter contract pursuant to subsection (21), which shall incorporate the approved application and any addenda approved with the application. Any term or condition of a proposed charter contract that differs from the standard charter contract adopted by rule of the State Board of Education shall

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20-01034-22 2022892__

be presumed a limitation on charter school flexibility. The sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. The charter shall be signed by the governing board of the charter school and the sponsor, following a public hearing to ensure community input.

(d) A charter may be modified ~~during its initial term or any renewal term~~ upon the recommendation of the sponsor or the charter school's governing board and the approval of both parties to the agreement. Changes to curriculum which are consistent with state standards shall be deemed approved unless the sponsor and the Department of Education determine in writing that the curriculum is inconsistent with state standards. Modification during any term may include, but is not limited to, consolidation of multiple charters into a single charter if the charters are operated under the same governing board, regardless of the renewal cycle. A charter school that is not subject to a school improvement plan and that closes as part of a consolidation shall be reported by the sponsor as a consolidation. A request for consolidation of multiple charters must be approved or denied within 60 days after the submission of the request. If the request is denied, the sponsor shall notify the charter school's governing board of the denial and provide the specific reasons, in reasonable detail, for the denial of the request for consolidation within 10 days.

(8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

(b) Before a vote on any proposed action to renew, terminate, or not renew the charter and at least 90 days before the end of the district school year ~~renewing, nonrenewing, or~~

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

~~terminating a charter~~, the sponsor shall notify the governing board of the school in writing of the proposed action to renew, terminate, or not renew the charter. A charter must automatically renew with the same terms and conditions if a vote on the proposed action does not occur at least 90 days before the end of the school year ~~in writing~~. The notice shall state in reasonable detail the grounds for the proposed action and stipulate that the school's governing board may, within 14 calendar days after receiving the notice, request a hearing. The hearing shall be conducted by an administrative law judge assigned by the Division of Administrative Hearings. The hearing shall be conducted within 90 days after receipt of the request for a hearing and in accordance with chapter 120. The administrative law judge's final order shall be submitted to the sponsor. The administrative law judge shall award the prevailing party reasonable attorney fees and costs incurred during the administrative proceeding and any appeals. The charter school's governing board may, within 30 calendar days after receiving the final order, appeal the decision pursuant to s. 120.68.

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

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The Florida Senate

APPEARANCE RECORD

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2/15/22
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Rules
Committee

SB 892
Bill Number or Topic

Amendment Barcode (if applicable)

Name TRISH NEELY

Phone 850 322 3317

Address 2024 SHANGRI LA LANE
Street

TALLY FL 32303
City *State* *Zip*

Email

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

LEAGUE OF WOMEN VOTERS FLORIDA

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

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S-001 (08/10/2021)

The Florida Senate

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SB 892
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Amendment Barcode (if applicable)

Name CHRISTIAN CAMARA

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TALLAHASSEE FL 32302
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☒ I am a registered lobbyist, representing:

FLORIDA CHARTER SCHOOL ALLIANCE

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S-001 (08/10/2021)

The Florida Senate

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2/15/22
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Rules
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SB 892
Bill Number or Topic

Amendment Barcode (if applicable)

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Email shan@excelined.org

Tall 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: Foundation for Florida's Future

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

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

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 940
INTRODUCER:	Senator Baxley
SUBJECT:	Professional Structural Engineers
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Favorable**
2.	Renner	McKay	CM	**Favorable**
3.	Kraemer	Phelps	RC	**Favorable**

I. Summary:

SB 940 authorizes the Florida Board of Professional Engineers (board) to establish minimum standards of practice for the profession of structural engineering, which includes the structural analysis and design of components for threshold buildings (those higher than 50 feet/three stories or with an occupancy of greater than 500 persons), including engineering that requires significant structural engineering education, training, experience, and examination, as determined by the board.

The bill prohibits, effective March 1, 2024, the practice of professional structural engineering by any person who is not a licensed professional structural engineer or otherwise exempted from licensure under ch. 471, F.S., relating to engineering.

Under the bill, the following titles may not be used by persons who are not licensed or exempt from licensing under current law relating to engineering: "licensed structural engineer," "professional structural engineer," or "registered structural engineer," or any designation that indicates a person holds an active license.

The bill authorizes the board to certify persons as qualified to be licensed to practice professional structural engineering if they are licensed or qualify for licensure as an engineer, have at least four years of active structural engineering experience under the supervision of a licensed professional engineer, have passed certain professional examinations, and meet other administrative requirements. The bill also requires the board to certify qualified foreign or out-of-state applicants for licensure by endorsement in certain circumstances.

SB 942, relating to Fees/Professional Structural Engineer Licensing, is linked to this bill, and provides for the establishment of licensing fees by the board to be paid by persons seeking licensure as a professional structural engineer.

See Section V, Fiscal Impact Statement.

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

II. Present Situation:

Regulation of Professional Engineers

The practice of engineering is regulated by the board. Section 471.005(7), F.S., defines the term "engineering" to include:

> the term "professional engineering" and means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services. A person who practices any branch of engineering; who, by verbal claim, sign, advertisement, letterhead, or card, or in any other way, represents himself or herself to be an engineer or, through the use of some other title, implies that he or she is an engineer or that he or she is licensed under this chapter; or who holds himself or herself out as able to perform, or does perform, any engineering service or work or any other service designated by the practitioner which is recognized as engineering shall be construed to practice or offer to practice engineering within the meaning and intent of this chapter [ch. 471, Engineering].

Unlike most Department of Business and Professional Regulation (DBPR) professions, the administrative, investigative, and prosecutorial services for the board are not provided by the DBPR. The DBPR contracts with the Florida Engineers Management Corporation (FEMC), a nonprofit corporation, to provide such services.[1] The FEMC is a public-private nonprofit association that has contracted with the DBPR to handle administrative, investigative, and prosecutorial services for the Board of Professional Engineers.[2]

[1] *See* s. 471.038, F.S., the Florida Engineers Management Corporation Act, for the duties and authority of the FEMC.
[2] *See* the Annual Report of the FEMC for FY 2020-2021, available at https://fbpe.org/wp-content/uploads/2021/10/2020-21-FEMC-Annual-Report.pdf (last visited Feb. 4, 2022), and the contract between the DBPR and the FEMC for the period

Section 471.008, F.S., authorizes the board to adopt rules to implement the provisions of ch. 471, F.S., and for ch. 455, F.S., which provides the general licensing procedures for professional licensing by the DBPR and its professional licensing boards. The board has adopted responsibility rules for the profession of engineering addressing a variety of issues, including the design of structures and fire protection systems.[3]

There were 62,909 licensed professional engineers in Fiscal Year 2020-2021.[4] The FEMC processed 231 complaints regarding engineering practice during that period, with 137 of those complaints found to be legally sufficient to proceed, and filed 68 administrative complaints in cases where probable cause was found relating to a violation of the practice act.[5]

Professional Engineer License Qualifications and Exemptions

Section 471.013, F.S., provides the license qualifications for a professional engineer. In order to be licensed as a professional engineer, a person must successfully pass two examinations: the fundamentals examination and the principles and practices examination. Prior to being permitted to sit for the fundamentals examination, an applicant must have graduated from:

- An approved engineering science curriculum of four years or more in a board-approved school, college, or university; or
- An approved engineering technology curriculum of four years or more in a board-approved school, college, or university.[6]

The FEMC must issue a license to any applicant who the board certifies is qualified to practice engineering and who has passed the fundamentals examination and the principles and practice examination.[7]

Under s. 471.015(2), F.S., the board must certify for licensure any applicant who has submitted proof of being at least 18 years old and has the required engineering experience. For graduates of an approved engineering science curriculum, the applicant must have a record of at least four years of active engineering experience sufficient to indicate competence to be in responsible charge of engineering. Graduates of an approved engineering technology curriculum must have a record of at least six years of such qualified experience.[8]

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between July 1, 2021 and June 30, 2025 at https://fbpe.org/wp-content/uploads/2021/10/2021-25-DBPR-FEMC-Contract.pdf (last visited Feb. 4, 2022).

[3] The responsibility rules are in Fla. Admin. Code Chapters 61G15-30, 61G15-31, 61G15-32, and 61G15-33 (2021).

[4] There were 530 inactive professional engineering licenses in that fiscal year. *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2020-2021, for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation* (2020-2021 Annual Report) at p. 20, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Feb. 4, 2022).

[5] *See* the Annual Report of the FEMC for FY 2020-2021, at https://fbpe.org/wp-content/uploads/2021/10/2020-21-FEMC-Annual-Report.pdf, at p. 2 (last visited Feb. 4, 2022). The FEMC also filed 89 Final Orders with the DBPR; entered into three negotiations, and tried one administrative hearing; dismissed two cases after re-consideration; issued 16 reprimands, three suspensions, four probations, three project reviews, and three license restrictions; and imposed $44,765.23 in administrative costs and $58,500 in fines. The board also issued 88 Final Orders against licensees.

[6] Section 471.013(1)(a), F.S.

[7] Section 471.015(1), F.S.

[8] *See* ss. 471.015(2)(a)1. and 2., F.S.

Section 471.003(2), F.S., identifies those persons who are exempted from the licensing requirements of ch. 471, F.S.

Special Inspectors of Threshold Buildings

Section 471.015(7), F.S., authorizes the board to establish by rule the qualifications for certification of licensees as inspectors of threshold buildings. A "threshold building" is "any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons."[9]

The board is also authorized to establish minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector.[10]

The agency charged with enforcing the building code (enforcing agency)[11] must require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record.[12]

Use of Engineer Seals

Section 471.025(1), F.S., authorizes the board to prescribe, by rule, one or more forms of seal to be used by licensed engineers. Each licensee must obtain at least one seal.[13] All final drawings, specifications, plans, reports, or documents prepared or issued by the licensee and filed for public record and all final documents provided to the owner or the owner's representative must be signed by the licensee, dated, and sealed with the seal.[14] The signature, date, and seal are evidence of the authenticity of the document to which they are affixed.[15]

A licensee may not affix or permit to be affixed his or her seal, name, or digital signature to any plan, specification, drawing, final bid document, or other document that depicts work which he or she is not licensed to perform or which is beyond his or her profession or specialty.[16]

A successor engineer seeking to reuse documents previously sealed by another engineer must be able to independently re-create all of the work done by the original engineer, and assumes full

[9] *See* s. 553.71(12), F.S.
[10] *See* s. 471.015(7), F.S.
[11] *See* s. 553.71(5), F.S., which defines the term "local enforcement agency" to mean "an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities."
[12] Section 553.79(5)(a), F.S.
[13] Section 471.025(1), F.S.
[14] *Id*.
[15] *Id*.
[16] Section 471.025(3), F.S.

professional and legal responsibility by signing and affixing his or her seal to the assumed documents.[17]

Use of Descriptive Titles

Section 471.031, F.S., sets forth the permissible and prohibited titles for persons licensed under ch. 471, F.S., and for persons who are otherwise exempted from such licensure. With certain exceptions for persons exempted from licensure, the use of the name "professional engineer" or any other title, designation, abbreviation, or indication that a person holds an active license as an engineer when the person is not licensed under ch. 471, F.S., is prohibited, along with use of the following titles:

- Agricultural engineer;
- Air-conditioning engineer;
- Architectural engineer;
- Building engineer;
- Chemical engineer;
- Civil engineer;
- Control systems engineer;
- Electrical engineer;
- Environmental engineer;
- Fire protection engineer;
- Industrial engineer;
- Manufacturing engineer;
- Mechanical engineer;
- Metallurgical engineer;
- Mining engineer;
- Minerals engineer;
- Marine engineer;
- Nuclear engineer;
- Petroleum engineer;
- Plumbing engineer;
- Structural engineer;
- Transportation engineer;
- Software engineer;
- Computer hardware engineer; and
- Systems engineer.[18]

Any person who violates the provisions commits a misdemeanor of the first degree.[19]

[17] Section 471.025(4), F.S. The original engineer is released from any professional responsibility or civil liability for work that is assumed.
[18] *See* s. 471.031(1)(b), F.S.
[19] Section 471.031(2), F.S. A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding $1,000. Sections 775.082 and 775.083, F.S.

Imposition of Discipline by the Board

The conduct that constitutes grounds for the imposition of discipline by the board are set forth in s. 471.033, F.S. Such discipline includes denial of an application for licensure, suspension or revocation of a license, imposition of fines, reprimands, probation, or restitution, and restriction of the authorized scope of practice of a licensee.[20]

Voluntary Structural Engineer Associations

The Florida Structural Engineers Association (FSEA) provides input on building codes and enforcement and sponsors technical seminars to address common concerns of the profession.[21] Members of FSEA become members of the National Council of Structural Engineers Associations (NCSEA).[22] The NCSEA was formed to improve the standard level of practice of the structural engineering profession and provide an identifiable resource for seeking communication with the profession.[23] It advocates for the practice of structural engineering on behalf of its 44 member organizations.[24] According to the NCSEA, two states restrict who may use the title "structural engineer,"[25] eight states have a partial practice act for structural engineers,[26] and two states have a full practice act for structural engineers.[27]

The National Council of Examiners for Engineering and Surveying is a nonprofit organization composed of 69 engineering and surveying licensing boards from all 50 states, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.[28] It provides services including engineering examinations, surveying examinations, exam preparation materials, records programs, and credentials evaluations among other services to licensing jurisdictions.[29]

III. Effect of Proposed Changes:

Section 1 amends s. 471.003, F.S., to prohibit, effective March 1, 2024, the practice of professional structural engineering by any person who is not a licensed professional structural engineer or otherwise exempted from licensure under ch. 471, F.S., related to engineering.

The bill prohibits the use of the name or title of "licensed structural engineer," "professional structural engineer," or "registered structural engineer" or any other title that indicates an unlicensed person is a licensed professional structural engineer in this state. The bill amends s. 471.003(2), F.S., to clarify that certain persons are not required to be licensed as a licensed professional structural engineer, and this exemption includes contractors performing work designed by a professional structural engineer.

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[20] Section 471.033(3), F.S.
[21] *See* http://www.flsea.com/ and https://flsea.com/Messages_from_the_President (last visited Feb. 4, 2022).
[22] *Id*.
[23] *See* http://www.ncsea.com/about/ (last visited Feb. 4, 2022).
[24] *Id*.
[25] Idaho and Nebraska. *See* http://www.ncsea.com/resources/licensure/ (last visited Feb. 4, 2022).
[26] Alaska, California, Georgia, Nevada, Oklahoma, Oregon, Utah, and Washington. *Id.*
[27] Illinois and Hawaii. *Id.*
[28] *See* The National Council of Examiners for Engineering and Surveying (ncees.org) (last visited Feb. 4, 2022).
[29] *Id*.

Section 2 amends s. 471.005, F.S., to define the term "professional structural engineer" to mean a person who is licensed to engage in the practice of professional structural engineering in Florida under ch. 471, F.S.

The bill defines the term "professional structural engineering" to mean a service or creative work that includes the structural analysis and design of structural components or systems for threshold buildings.[30] The term includes engineering that requires significant structural engineering education, training, experience, and examination, as determined by the board.

The bill allows a retired professional structural engineer to be granted use of the title "professional engineer, retired" or "professional structural engineer, retired" by the board, if the retiree has:
- Been licensed as a professional engineer by the board;
- Relinquished or not renewed a license; and
- Applied to and been approved by the board to use such title.

Section 3 amends s. 471.013(2)(a), F.S., relating to licensure, to include a reference to licensed professional structural engineers.

Section 4 amends s. 471.015, F.S., to authorize the FEMC to license a person it certifies is qualified to practice professional structural engineering if they are licensed or qualify for licensure as an engineer, have at least four years of active professional structural engineering experience under the supervision of a licensed professional engineer, have passed certain professional examinations, and meet other administrative requirements.

Under the bill, an applicant for licensure as a professional structural engineer must:
- Be licensed as an engineer, or qualify for licensure, under ch. 471, F.S.;
- Submit an application in the format prescribed by the board;
- Provide satisfactory evidence of good moral character, as defined by the board;
- Provide a record of four years of active professional structural engineering experience, as defined by the board, under the supervision of a licensed professional engineer; and
- Have successfully passed the 16-hour National Council of Examiners for Engineering and Surveying Structural Engineering examination.

Before March 1, 2024, a qualified applicant may satisfy the 16-hour examination requirement by:
- Submitting a signed affidavit in the format prescribed by the board that states the applicant is currently a licensed engineer in Florida and has been engaged in the practice of structural engineering with a record of at least four years of active structural engineering design experience;
- Possessing a current professional engineering license and filing the necessary documentation as required by the board, or possessing a current threshold inspector license; and

[30] Section 553.71(12), F.S., provides a "threshold building" is "any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons."

- Agreeing to meet with the board or its representative, at the board's request, for the purpose of evaluating the applicant's qualifications for licensure.

An applicant who qualifies for licensure as an engineer may simultaneously apply for licensure as a professional structural engineer, if all the above requirements and all education, examination, experience, and good moral character requirements set forth in s. 471.013, F.S., are met.

The bill sets forth the following requirements for board certification of an applicant as qualified for licensure as a professional structural engineer by endorsement:

- An applicant who holds a license to practice either engineering or professional structural engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in Florida at the time the license was issued; or
- An applicant who holds a valid license to practice professional structural engineering issued by another state or territory of the United States and who has successfully passed one of the following 16-hour examination combinations:
    - The 8-hour National Council of Examiners for Engineering and Surveying[31] Structural Engineering I examination and the 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination.
    - The 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination and either the 8-hour National Council of Examiners for Engineering and Surveying Civil: Structural examination or the 8-hour National Council of Examiners for Engineering and Surveying Architectural Engineering examination.
    - The 16-hour Western States Structural Engineering examination.
    - The 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination, and either the 8-hour California Structural Engineering Seismic III examination, or the 8-hour Washington Structural Engineering III examination.

Section 5 amends s. 471.019, F.S., relating to reinstatement of void licenses, to include a reference to licensed professional structural engineers.

Section 6 amends s. 471.025(2), F.S., regarding the use of seals on documents, to include a reference to the use of seals when a professional structural engineer's license is revoked or suspended.

Section 7 amends s. 471.031, F.S., to provide that beginning March 1, 2024, no person may practice professional structural engineering unless the person is licensed as a professional structural engineer or exempt from licensure under ch. 471, F.S. The bill also provides that the

[31] The National Council of Examiners for Engineering and Surveying (NCEES) is a nonprofit organization dedicated to advancing professional licensure for engineers and surveyors. In the United States, engineers and surveyors are licensed at the state and territory level. NCEES was created in 1920 and provides services for licensure and facilitation of mobility among licensing jurisdictions, including the development and scoring of examinations for licensure. *See* National Council of Examiners for Engineering and Surveying, *Advancing Licensure for Engineers and Surveyors, available at* https://ncees.org/about/ (last visited Jan. 19, 2022).

following titles may not be used by persons who are not licensed, or otherwise exempt from licensing, under ch. 471, F.S., relating to engineering: "licensed structural engineer," "professional structural engineer," "registered structural engineer," or "structural engineer."

Section 8 amends s. 471.033, F.S., related to disciplinary proceedings, to revise the acts that constitute grounds for discipline, to include acts related to the practice of professional structural engineering.

Section 9 amends s. 471.037(1), F.S., related to the construction of provisions in ch. 471, F.S., to provide that local building codes, zoning laws, or ordinances may be more restrictive concerning the services of licensed professional structural engineers.

Section 10 amends s. 471.0385, F.S., related to certain authorizations granted to the Governor. The bill grants authority to the Governor to reestablish positions, budget authority, and salary rate necessary to carry out the DBPR's responsibilities relating to "professional structural engineers," in the event the Florida Engineers Management Corporation Act[32] is held to be unconstitutional or to violate state or federal antitrust laws.

Section 11 provides an effective date of July 1, 2022.

The bill also includes technical drafting changes and conforming changes.

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.

[32] *See* s. 471.038, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Beginning March 1, 2024, persons who are licensed engineers in Florida and those who perform work that comes within the definition in the bill for "professional structural engineering" will be required to obtain additional licensing to perform such work.

C. Government Sector Impact:

The creation of an additional licensing and regulatory structure for professional structural engineers may result in a fiscal impact to the DBPR or the FEMC. To date, no analysis by the DBPR or the FEMC of the impact of the bill on their respective operations, revenue, and expenditures has been provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 942, relating to Fees/Professional Structural Engineer Licensing, is linked to this bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 471.003, 471.005, 471.013, 471.015, 471.019, 471.025, 471.031, 471.033, 471.037, and 471.0385.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Baxley

12-00812A-22 2022940__

A bill to be entitled

An act relating to professional structural engineers; amending s. 471.003, F.S.; prohibiting a person who is not licensed as an engineer from using a specified name or title; prohibiting, after a date certain, specified persons from using specified names and titles or practicing professional structural engineering; exempting certain persons from licensing requirements; amending s. 471.005, F.S.; providing and revising definitions; amending s. 471.013, F.S.; authorizing the Board of Professional Engineers to refuse to certify an applicant for a professional structural engineer license for certain reasons; amending s. 471.015, F.S.; providing licensure and application requirements for a professional structural engineer license; exempting certain applicants who apply for licensure before a date certain from having to pass a certain national examination, under certain conditions; requiring the board to certify certain applicants for licensure by endorsement; amending ss. 471.019 and 471.025, F.S.; conforming provisions to changes made by the act; amending s. 471.031, F.S.; prohibiting certain persons from practicing professional structural engineering after a date certain; prohibiting specified persons from using specified names and titles; amending s. 471.033, F.S.; specifying acts that constitute grounds for disciplinary action, including civil penalties, against a professional structural engineer; amending

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

12-00812A-22 2022940__

ss. 471.037 and 471.0385, 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. Subsections (1) and (2) of section 471.003, Florida Statutes, are amended to read:

471.003 Qualifications for practice; exemptions.—

(1)(a) No person other than a duly licensed engineer shall practice engineering or use the name or title of "licensed engineer," "professional engineer," or "registered engineer" or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as an engineer in this state.

(b) Effective March 1, 2024, only a person who is a duly licensed professional structural engineer shall engage in the practice of professional structural engineering or use the name or title of "licensed structural engineer," "professional structural engineer," or "registered structural engineer" or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as a professional structural engineer in this state.

(2) The following persons are not required to be licensed under ~~the provisions of~~ this chapter as a licensed engineer or a licensed professional structural engineer:

(a) Any person practicing engineering for the improvement of, or otherwise affecting, property legally owned by her or him, unless such practice involves a public utility or the

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public health, safety, or welfare or the safety or health of employees. This paragraph may ~~shall~~ not be construed as authorizing the practice of engineering through an agent or employee who is not duly licensed under ~~the provisions of~~ this chapter.

(b)1. A person acting as a public officer employed by any state, county, municipal, or other governmental unit of this state when working on any project the total estimated cost of which is $10,000 or less.

2. Persons who are employees of any state, county, municipal, or other governmental unit of this state and who are the subordinates of a person in responsible charge licensed under this chapter, to the extent that the supervision meets standards adopted by rule of the board.

(c) Regular full-time employees of a corporation not engaged in the practice of engineering as such, whose practice of engineering for such corporation is limited to the design or fabrication of manufactured products and servicing of such products.

(d) Regular full-time employees of a public utility or other entity subject to regulation by the Florida Public Service Commission, Federal Energy Regulatory Commission, or Federal Communications Commission.

(e) Employees of a firm, corporation, or partnership who are the subordinates of a person in responsible charge, licensed under this chapter.

(f) Any person as contractor in the execution of work designed by a professional engineer or a professional structural engineer or in the supervision of the construction of work as a

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foreman or superintendent.

(g) A licensed surveyor and mapper who takes, or contracts for, professional engineering services incidental to her or his practice of surveying and mapping and who delegates such engineering services to a licensed professional engineer qualified within her or his firm or contracts for such professional engineering services to be performed by others who are licensed professional engineers under ~~the provisions of~~ this chapter.

(h) Any electrical, plumbing, air-conditioning, or mechanical contractor whose practice includes the design and fabrication of electrical, plumbing, air-conditioning, or mechanical systems, respectively, which she or he installs by virtue of a license issued under chapter 489, under former part I of chapter 553, Florida Statutes 2001, or under any special act or ordinance when working on any construction project which:

1. Requires an electrical or plumbing or air-conditioning and refrigeration system with a value of $125,000 or less; and

2.a. Requires an aggregate service capacity of 600 amperes (240 volts) or less on a residential electrical system or 800 amperes (240 volts) or less on a commercial or industrial electrical system;

b. Requires a plumbing system with fewer than 250 fixture units; or

c. Requires a heating, ventilation, and air-conditioning system not to exceed a 15-ton-per-system capacity, or if the project is designed to accommodate 100 or fewer persons.

(i) Any general contractor, certified or registered pursuant to ~~the provisions of~~ chapter 489, when negotiating or

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performing services under a design-build contract as long as the engineering services offered or rendered in connection with the contract are offered and rendered by an engineer or a professional structural engineer licensed under ~~in accordance with~~ this chapter.

(j) Any defense, space, or aerospace company, whether a sole proprietorship, firm, limited liability company, partnership, joint venture, joint stock association, corporation, or other business entity, subsidiary, or affiliate, or any employee, contract worker, subcontractor, or independent contractor of the defense, space, or aerospace company who provides engineering for aircraft, space launch vehicles, launch services, satellites, satellite services, or other defense, space, or aerospace-related product or services, or components thereof.

Section 2. Subsections (10) through (12) of section 471.005, Florida Statutes, are renumbered as subsections (12) through (14), respectively, present subsection (10) is amended, and new subsections (10) and (11) are added to that section, to read:

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

(10) "Professional structural engineer" means a person who is licensed to engage in the practice of professional structural engineering under this chapter.

(11) "Professional structural engineering" means a service or creative work that includes the structural analysis and design of structural components or systems for threshold buildings as defined in s. 553.71. The term includes engineering which requires significant structural engineering education,

training, experience, and examination, as determined by the board.

(12)~~(10)~~ "Retired professional engineer," ~~or~~ "professional engineer, retired," "retired professional structural engineer," or "professional structural engineer, retired" means a person who has been duly licensed as a professional engineer by the board and who chooses to relinquish or not to renew his or her license and applies to and is approved by the board to be granted the title "Professional Engineer, Retired" or "Professional Structural Engineer, Retired."

Section 3. Paragraph (a) of subsection (2) of section 471.013, Florida Statutes, is amended to read:

471.013 Examinations; prerequisites.—

(2)(a) The board may refuse to certify an applicant for failure to satisfy the requirement of good moral character only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensed engineer or licensed professional structural engineer; and

2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

Section 4. Subsections (3) through (7) of section 471.015, Florida Statutes, are renumbered as subsections (4) through (8), respectively, present subsection (3) is amended, and a new subsection (3) is added to that section, to read:

471.015 Licensure.—

(3)(a) The management corporation shall issue a professional structural engineer license to any applicant whom

the board certifies as qualified to practice professional structural engineering and who meets all of the following requirements:

1. Is licensed under this chapter as an engineer or is qualified for licensure as an engineer.

2. Submits an application in the format prescribed by the board.

3. Provides satisfactory evidence of good moral character, as defined by the board.

4. Provides a record of 4 years of active structural engineering experience, as defined by the board, under the supervision of a licensed professional engineer.

5. Has successfully passed the 16-hour National Council of Examiners for Engineering and Surveying Structural Engineering examination.

(b) Before March 1, 2024, an applicant who satisfies the requirements of subparagraphs (a)1.-4. may satisfy subparagraph (a)5. by:

1. Submitting a signed affidavit in the format prescribed by the board which states that the applicant is currently a licensed engineer in this state and has been engaged in the practice of structural engineering with a record of at least 4 years of active structural engineering design experience;

2. Possessing a current professional engineering license and filing the necessary documentation as required by the board, or possessing a current threshold inspector license; and

3. Agreeing to meet with the board or a representative of the board, upon the board's request, for the purpose of evaluating the applicant's qualifications for licensure.

(c) An applicant who qualifies for licensure as an engineer under s. 471.013 may simultaneously apply for licensure as a professional structural engineer if all requirements of s. 471.013 and this subsection are met.

(4)~~(3)~~ The board shall certify as qualified for a license ~~by endorsement an applicant who~~:

(a) In engineering, by endorsement, an applicant who qualifies to take the fundamentals examination and the principles and practice examination as set forth in s. 471.013, has passed a United States national, regional, state, or territorial licensing examination that is substantially equivalent to the fundamentals examination and principles and practice examination required by s. 471.013, and has satisfied the experience requirements set forth in paragraph (2)(a) and s. 471.013; ~~or~~

(b) In engineering or professional structural engineering, by endorsement, an applicant who holds a valid license to practice engineering or, for professional structural engineering, an applicant who holds a valid license to practice professional structural engineering, issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued; or

(c) In professional structural engineering, by endorsement, an applicant who holds a valid license to practice professional structural engineering issued by another state or territory of the United States and who has successfully passed one of the following 16-hour examination combinations:

1. The 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering I examination and the 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination.

2. The 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination and either the 8-hour National Council of Examiners for Engineering and Surveying Civil: Structural examination or the 8-hour National Council of Examiners for Engineering and Surveying Architectural Engineering examination.

3. The 16-hour Western States Structural Engineering examination.

4. The 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination and either the 8-hour California Structural Engineering Seismic III examination or the 8-hour Washington Structural Engineering III examination.

Section 5. Section 471.019, Florida Statutes, is amended to read:

471.019 Reactivation.—The board shall establish by rule a reinstatement process for void licenses. The rule shall prescribe appropriate continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license for a licensed engineer or a licensed professional structural engineer may not exceed the continuing education requirements prescribed pursuant to s. 471.017 for each year the license was inactive.

Section 6. Subsection (2) of section 471.025, Florida Statutes, is amended to read:

471.025 Seals.—

(2) It is unlawful for any person to seal or digitally sign any document with a seal or digital signature after his or her license has expired or been revoked or suspended, unless such license is ~~has been~~ reinstated or reissued. When an engineer's or a professional structural engineer's license is ~~has been~~ revoked or suspended by the board, the licensee shall, within a period of 30 days after the revocation or suspension has become effective, surrender his or her seal to the executive director of the board and confirm to the executive director the cancellation of the licensee's digital signature in accordance with ss. 668.001-668.006. In the event the engineer's license has been suspended for a period of time, his or her seal shall be returned to him or her upon expiration of the suspension period.

Section 7. Paragraphs (b) through (g) of subsection (1) of section 471.031, Florida Statutes, are redesignated as paragraphs (c) through (h), respectively, present paragraph (b) of that subsection is amended, and a new paragraph (b) is added to that subsection, to read:

471.031 Prohibitions; penalties.—

(1) A person may not:

(b) Beginning March 1, 2024, practice professional structural engineering unless the person is licensed as a professional structural engineer or is exempt from licensure under this chapter.

(c) ~~(b)~~ 1. Except as provided in subparagraph 2. or subparagraph 3., use the name or title "professional engineer" or any other title, designation, words, letters, abbreviations,

or device tending to indicate that such person holds an active license as an engineer when the person is not licensed under this chapter, including, but not limited to, the following titles: "agricultural engineer," "air-conditioning engineer," "architectural engineer," "building engineer," "chemical engineer," "civil engineer," "control systems engineer," "electrical engineer," "environmental engineer," "fire protection engineer," "industrial engineer," "manufacturing engineer," "mechanical engineer," "metallurgical engineer," "mining engineer," "minerals engineer," "marine engineer," "nuclear engineer," "petroleum engineer," "plumbing engineer," "structural engineer," "transportation engineer," "software engineer," "computer hardware engineer," or "systems engineer."

2. Any person who is exempt from licensure under s. 471.003(2)(j) may use the title or personnel classification of "engineer" in the scope of his or her work under that exemption if the title does not include or connote the term "professional engineer," "registered engineer," "licensed engineer," "registered professional engineer," ~~or~~ "licensed professional engineer," "licensed structural engineer," "professional structural engineer," or "registered structural engineer."

3. Any person who is exempt from licensure under s. 471.003(2)(c) or (e) may use the title or personnel classification of "engineer" in the scope of his or her work under that exemption if the title does not include or connote the term "professional engineer," "registered engineer," "licensed engineer," "registered professional engineer," ~~or~~ "licensed professional engineer," "licensed structural engineer," "professional structural engineer," "registered

structural engineer," or "structural engineer," and if that person is a graduate from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board.

Section 8. Paragraphs (b) through (e) and (g) of subsection (1) and subsection (4) of section 471.033, Florida Statutes, are amended to read:

471.033 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(b) Attempting to procure a license to practice engineering or professional structural engineering by bribery or fraudulent misrepresentations.

(c) Having a license to practice engineering or professional structural engineering revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country~~,~~ for any act that would constitute a violation of this chapter or chapter 455.

(d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of engineering, professional structural engineering, or the ability to practice engineering or professional structural engineering.

(e) Making or filing a report or record that the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those

that are signed in the capacity of a licensed engineer or licensed professional structural engineer.

(g) Engaging in fraud or deceit, negligence, incompetence, or misconduct~~,~~ in the practice of engineering or professional structural engineering.

(4) The management corporation shall reissue the license of a disciplined engineer, professional structural engineer, or business upon certification by the board that the disciplined person has complied with all of the terms and conditions set forth in the final order.

Section 9. Subsection (1) of section 471.037, Florida Statutes, is amended to read:

471.037 Effect of chapter locally.—

(1) Nothing contained in this chapter shall be construed to repeal, amend, limit, or otherwise affect any local building code or zoning law or ordinance, now or hereafter enacted, which is more restrictive with respect to the services of licensed engineers or licensed professional structural engineers than the provisions of this chapter.

Section 10. Subsection (3) of section 471.0385, Florida Statutes, is amended to read:

471.0385 Court action; effect.—If any provision of s. 471.038 is held to be unconstitutional or is held to violate the state or federal antitrust laws, the following shall occur:

(3) The Executive Office of the Governor, notwithstanding chapter 216, is authorized to reestablish positions, budget authority, and salary rate necessary to carry out the department's responsibilities related to the regulation of professional engineers and professional structural engineers.

Section 11. This act shall take effect July 1, 2022.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

February 7, 2022

The Honorable Senator Kathleen Passidomo
400 Senate Office Building
Tallahassee, FL 32399

Dear Chair Passidomo,

I would like to request that SB 940 Professional Structural Engineers be heard in the next Rules Committee meeting.

SB 940 authorizes the Florida Board of Professional Engineers (board) to establish minimum standards of practice for the profession of structural engineering, which includes the structural analysis and design of components for threshold buildings (those higher than 50 feet/three stories or with an occupancy of greater than 500 persons) as well as the practice of engineering under current law.

The bill prohibits, effective March 1, 2024, the practice of professional structural engineering by any person who is not a licensed professional structural engineer or otherwise exempted from licensure under ch. 471, F.S., related to engineering.

The bill authorizes the board to certify persons as qualified to practice structural engineering if they are licensed or qualify for licensure as an engineer, have at least 4 years of active structural engineering experience under the supervision of a licensed engineer, have passed certain professional examinations, and meet other administrative requirements.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

cc: John Phelps, Staff Director

REPLY TO:
❒ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
❒ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
❒ 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: *www.flsenate.gov*

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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

2/15/2022
Meeting Date

RULES
Committee

940
Bill Number or Topic

Amendment Barcode (if applicable)

Name CHRIS CHILDERS

Phone 850 443 6667

Address 3144 FERNS GLEN DR.
Street

Email C-childers@bnieengineers.com

TALLAHASSEE FL 32309
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 968
INTRODUCER:	Senator Polsky
SUBJECT:	Individual Retirement Accounts
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Favorable**
2.	Ravelo	Cibula	JU	**Favorable**
3.	Schrader	Phelps	RC	**Favorable**

I. Summary:

SB 968 clarifies that any interest in an individual retirement account (IRA) or individual retirement annuity received in a transfer incident to divorce remains exempt from creditor claims after the transfer is complete. As the bill clarifies, but does not modify, existing law or practice, the bill is remedial in nature and applies retroactively to all transfers made incident to divorce.

The bill is effective upon becoming a law.

II. Present Situation:

Asset Protections Available in Florida

A creditor, such as a hospital seeking outstanding debt from a patient, may collect money owed by filing an action for a judgment in state court. A judgment is an order of the court creating an obligation, such as a debt. The creditor may then use that judgment to collect from the debtor, i.e., executing the judgement, using certain legal tools such as garnishing of wages and bank accounts and attaching liens[1] to personal and real property. Both the Florida Constitution and Florida Statutes contain exemptions to protect certain real and personal property of natural persons from forced sale by creditors. State constitutional exemptions, such as those for homestead property,[2] may be modified only through a proposed constitutional amendment that is subsequently approved by the electorate. Exemptions provided in Florida Statutes may be modified through the regular legislative process. Chapter 222, F.S., specifies the types of property that are exempt from the claims of creditors.

[1] A lien is a "security interest or legal right acquired in one's property by a creditor. A lien generally stays in effect until the underlying obligation to the creditor is satisfied. If the underlying obligation is not satisfied, the creditor may be able to take possession of the property involved." *See* Legal Information Institute, *Lien*, available at https://www.law.cornell.edu/wex/lien

[2] *See* FLA. CONST. art. X, s. 4.

Section 222.21, F.S., provides that pension money and certain tax-exempt funds or accounts are exempt from legal processes, such as forced sale. Subsection (1) protects certain money received by any debtor as a pensioner of the United States. Subsection (2) protects any money or other assets payable to an owner, a participant, or a beneficiary from, and any interest[3] therein of any owner, beneficiary, or participant if the fund or account meets certain qualifications. These funds or accounts are commonly known as qualified, tax-exempt retirement accounts, and must be:

- Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or other governing instrument preapproved by the Internal Revenue Service (IRS) as exempt from taxation under certain sections of the Internal Revenue Code of 1986 (IRC), as amended, regarding qualified retirement plans,[4] unless the exemption was overturned in a final, non-appealable, proceeding;
- Maintained in accordance with a plan or governing instrument determined by the IRS to be exempt from taxation under certain sections of the IRC regarding qualified retirement plans,[5] unless such exemption was overturned in a final, non-appealable, proceeding; or
- Not maintained in accordance with one of the above-described plans or governing instruments, if the person claiming the exemption proves by a preponderance of the evidence that the fund or account is maintained in substantial compliance with the applicable sections regarding tax-exempt retirement accounts, or would have been in substantial compliance with the applicable requirements for exemption under those sections, but for the negligent or wrongful conduct of another person.

The fund or account need not be maintained in accordance with a plan or governing instrument covered by any part of the Employee Retirement Income Security Act (ERISA) to be exempt.[6] The funds or accounts are protected only to the extent they are not otherwise subject to claims of an alternate payee under a qualified domestic relations order, or claims of a surviving spouse pursuant to an order determining elective share and contribution in accordance with ch. 732, F.S.

Paragraph (2)(c) of s. 222.21, F.S., provides that the exemption for such money, other assets, or interest in these qualified, tax-exempt retirement accounts survives the owner's death upon a direct transfer or other eligible rollover excluded from gross income under the IRC,[7] such as, but not limited to, the direct transfer or eligible rollover to an inherited individual retirement account (IRA).[8] This allows a beneficiary to enjoy the exemption upon transfer. Paragraph (2)(c) expressly states that it is intended to clarify existing law, be remedial in nature, and apply retroactively to all inherited individual retirement accounts without regard to the date the account was created.

---

[3] Under Florida law, the word "interest," as used in statute providing exemption from creditors' claims for any interest of owner, beneficiary, or participant in enumerated tax-preferred funds or accounts, is a broad term encompassing many rights of a party, tangible, intangible, legal, and equitable. *In re Maddox*, 713 F.2d 1526, 1530 (11th Cir. 1983).

[4] 26 U.S.C. ss. 401(a) (stock bonus, pension, and profit sharing plans), 403(a) and 403(b) (annuity plans), 408 (individual retirement accounts (IRAs), 408A (Roth IRAs), 409 (tax credit employee stock ownership plans), 414 (provides definitions and special rules for certain plans, such as retirement plans for government and church employees), 457(b) (deferred compensation plans), or 501(a) (defining organizations exempt from taxation, including those defined in 401(a)).

[5] *Id*.

[6] Section 222.21(2)(b), F.S.

[7] Section 222.21(2)(c), F.S.

[8] *See* 26 U.S.C. s. 408(d)(3); pursuant to s. 222.21(2), F.S., individual retirement accounts, and interests therein, maintained in accordance with 26 U.S.C. s. 408 are exempted from legal processes, such as forced sale by creditors.

The specified tax-exempt retirement plans enumerated in subsection (2) are exempt from all legal proceedings, including bankruptcy, even though bankruptcy is a federal proceeding governed by the United States Bankruptcy Code (Bankruptcy Code).[9]

Transfer of Section 408 Retirement Accounts Incident to Divorce

Retirement accounts exempted from taxation by s. 408 of the IRC are exempted from legal processes, such as forced sale, by Florida law.[10] Section 408 of the IRC contemplates individual retirement accounts (IRAs) and individual retirement annuities.[11] An individual retirement account is a trust created or organized in the United States for the exclusive benefit of an individual, or his beneficiaries, of which the governing document meets certain requirements.[12] An individual retirement annuity is an annuity contract, or an endowment contract, issued by an insurance company which meets certain requirements.[13] An interest in an individual retirement account or individual retirement annuity may be transferred, but only upon the death or divorce of the original owner.[14] The transfer of an interest in an individual retirement account or individual retirement annuity incident to divorce is not a taxable event.[15] Effective upon such transfer, the interest in the individual retirement account or individual retirement annuity is treated as the account of the spouse.[16]

Exempted Property in Bankruptcy Proceedings

The Federal Bankruptcy Code expressly recognizes exemptions provided under the state or local law of the domicile of the debtor.[17] Florida is an opt-out state, meaning that when a Florida resident files for bankruptcy, Florida law provides the exemptions available to the resident—instead of the Bankruptcy Code.[18] Florida law contains a number of exemptions included in the Bankruptcy Code, such as IRAs and pensions, profit sharing, and retirement benefits.[19] Florida also exempts all inherited IRA accounts from creditor claims.[20] Likewise, the Bankruptcy Code exempts retirement funds in a fund or account exempt from taxation under most of the same sections of the IRC, such as those applicable to stock bonus, pension, and profit sharing plans, annuity plans, IRAs, and deferred compensation plans.[21]

[9] 11 U.S.C. s. 101, *et. seq.*; 11 U.S.C. s. 522(b)(3)(A).
[10] Section 222.21(2), F.S.
[11] 26 U.S.C. s. 408(a)-(c).
[12] *See* 26 U.S.C. s. 408(a), *et. seq.*
[13] 26 U.S.C. s. 408(b).
[14] 26 U.S.C. s. 408(d).
[15] 26 U.S.C. s. 408(d)(6).
[16] *Id.*
[17] 11 U.S.C. s. 522(b)(3)(A).
[18] Section 222.20, F.S.
[19] Section 222.21(2), F.S.
[20] Section 222.21(2)(c), F.S.
[21] 11 U.S.C. s. 522(d)(12) exempts "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under sections 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." Section 222.21(2), F.S., exempts qualified plans exempt from taxation under ss. 401(a), 403(a) and 403(b), 408, 408A, 414, 457(b), and 501(a) of the IRC. Unlike the Bankruptcy Code, Florida additionally exempts qualified tax credit employee stock ownership plans exempted from taxation under section 409 of the IRC.

Lerbakken Decision

A 2018 bankruptcy court decision may indicate a need to clarify Florida's exemption for an IRA for when an interest is awarded incident to a divorce. The United States Bankruptcy Appellate Panel for the 8th Circuit,[22] *In re Lerbakken*, 590 B.R. 895 (B.A.P. 8th Cir. 2018) found that two requirements must be satisfied in order for a debtor to claim funds as exempt retirement funds pursuant to the Bankruptcy Code:

- The amount must be retirement funds; and
- The retirement funds must be in an account that is exempt from taxation under one of the provisions of the IRC.[23]

The Bankruptcy Code does not define the term "retirement funds," so the term is applied within its ordinary meaning: "sums of money set aside for the day an individual stops working."[24] In *Lerbakken*, the 8th Circuit Bankruptcy Appellate Panel held that funds held in 401K and IRA accounts awarded to a Chapter 7 debtor as part of a stipulated property settlement in a divorce proceeding were not "retirement funds" because while the debtor's former spouse had saved funds in those accounts for a joint retirement, any interest the debtor held in those accounts resulted from a property settlement. However, it is notable that the ruling was an 8th Federal Circuit opinion on appeal from the United States Bankruptcy Court for the District of Minnesota. Thus, the *Lerbakken* Court's ruling interpreting the meaning of "retirement funds" is not controlling in the 11th Circuit[25] (of which Florida is a part).

The issue of whether an IRA is exempt from bankruptcy proceedings when awarded incident to a divorce proceeding has arisen in the 11th Circuit recently.[26] During the course of the proceedings, the United States Bankruptcy Court for the Middle District of Florida, Tampa Division, acknowledged that, although the authority to make the certification for appeal had shifted from Bankruptcy Court to the district court during the pendency of ruling on a motion for appeal, there did exist a "matter of public importance" on the IRA issue and "no controlling decision of the Eleventh Circuit or the Supreme Court exists."[27] Further, the Bankruptcy Court acknowledged that "conflicting opinions from other jurisdictions arguably exist."[28] Thus, the Bankruptcy Court had intended to certify the issue for appellate review.[29]

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[22] The United States Court of Appeals for the Eighth Circuit is a federal appellate court having jurisdiction in the following states: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. 28 U.S. Code § 41.
[23] 11 U.S.C. s. 522(d)(12).
[24] *Clark v. Rameker*, 573 U.S. 122, 127 (2014).
[25] The United States Court of Appeals for the Eleventh Circuit is a federal appellate court having jurisdiction in the following states: Alabama, Florida, and Georgia. 28 U.S. Code § 41.
[26] This case was dismissed without prejudice on upon the parties reaching settlement in the matter. *Carapella v. Glass*, No. 8:19-cv-3050-T-02 (M.D. Fla. Jan. 8, 2021). Thus, the Court did not reach a decision on the IRA issue.
[27] *In re Glass*, 613 B.R. 33, 41 (Bankr. M.D. Fla. 2020).
[28] *Id.* at 41.
[29] *Id.* at 34. Under 28 U.S.C. s. 158(d)(2)(A), the grounds for certification for direct review in a court of appeals are:
(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of Supreme Court of the United States, or involves a matter of public importance;
(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or
(iii) an immediate appeal from the judgment, order, or decree may materially advance the progression of the case or proceeding in which the appeal is taken.

III. Effect of Proposed Changes:

Section 1 amends paragraph (2)(c) of s. 222.21, F.S., to clarify that any interest in any IRA or individual retirement annuity received in a transfer incident to divorce as described in s. 408(d)(6) of the Internal Revenue Code of 1986 (IRC), as amended, continues to be exempt from creditor claims after the transfer, regardless of the date the transfer was made.

To the extent s. 222.21(2)(a), F.S., exempts a transferee's interest in an IRA or individual retirement annuity upon a transfer incident to divorce pursuant to s. 408(d)(6) of the IRC, the bill clarifies current law, which exempts such interests from the claims of the transferee's creditors.

Existing law provides that s. 222.21(2)(c), F.S., is intended to clarify existing law, is remedial in nature, and shall have retroactive application. As a result, the provision of the bill will apply retroactively as well.

Section 2 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Retroactive Application

Once a bill becomes law, it is presumed to apply only prospectively. The presumption against retroactive application may be rebutted by clear evidence of legislative intent.[30] To determine if the terms of a statute and the purpose of the enactment indicate retroactive application, a court may consider the language, structure, purpose, and legislative history of the enactment.[31]

[30] *Florida Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc*., 67 So. 3d 187 (Fla. 2011).
[31] *Id*.

If the legislation clearly expresses an intent that the law apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.[32] Even when the Legislature has clearly expressed its intention that the statute be given a retroactive application, courts must refuse to do so if it impairs vested rights, creates new obligations, imposes new penalties,[33] or impairs an obligation of contract.[34] For example, ex post facto legislation, i.e., a law that expands criminal liability retroactively by either creating a new crime for past conduct or by increasing the penalty for past conduct, is forbidden by both the Florida Constitution and the United States Constitution. Statutes that do not alter vested rights but relate only to remedies or procedure may be applied retroactively.[35]

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 222.21, 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.

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[32] *Menendez v. Progressive Exp. Ins. Co., Inc*., 35 So. 3d 873 (Fla. 2010); *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[33] *Id.*
[34] *Menendez v. Progressive Exp. Ins. Co., Inc*., 35 So. 3d 873 (Fla. 2010).
[35] *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d 494 (Fla. 1999).

B. Amendments:

None.

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

By Senator Polsky

29-00017-22 2022968__

A bill to be entitled

An act relating to individual retirement accounts; amending s. 222.21, F.S.; specifying that certain interests received by a transferee after a divorce are exempt from claims of creditors upon being awarded to or received by the transferee; specifying that such interests remain exempt; providing retroactive applicability; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 222.21, Florida Statutes, is amended to read:

222.21 Exemption of pension money and certain tax-exempt funds or accounts from legal processes.—

(2)

(c) Any money or other assets or any interest in any fund or account that is exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does not cease to be exempt after the owner's death by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code of 1986, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended. An interest in any fund or account awarded or received in a transfer incident to divorce described in s. 408(d)(6) of the Internal Revenue Code of 1986, as amended, is exempt upon the interest being awarded or received and continues to be exempt

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

29-00017-22 2022968__

thereafter. This paragraph is intended to clarify existing law, is remedial in nature, and shall have retroactive application to all inherited individual retirement accounts and to each transfer incident to divorce without regard to the date an account was created or the transfer was made.

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

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

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 24, 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 968, relating to Individual Retirement Accounts, on the agenda of the Committee on Rules, at your earliest convenience.

A recent bankruptcy court decision highlights the need to clarify Florida's exemption for an IRA account awarded incident to a divorce. While current Florida law clearly exempts 401(k) plans received incident to divorce, the statute regarding IRA transfers in divorce is less precise.

SB 968 will clarify that IRAs and 401(k)s are treated the same under Florida Law, in that transfers incident to divorce are exempt from the claims of the transferee spouse's creditors.

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,

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*

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1046
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Hooper
SUBJECT:	Public Records/Law Enforcement Geolocation Information
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Favorable**
2.	Limones-Borja	McVaney	GO	**Fav/CS**
3.	Erickson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1046 makes exempt from public inspection and copying requirements law enforcement geolocation information held by a law enforcement agency. This is information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or a law enforcement vehicle. The bill provides that this exemption be applied retroactively. The bill requires law enforcement agencies to disclose law enforcement geolocation information when requested by a state or federal law enforcement agency.

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

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

The bill is not expected to impact state or local government revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records – Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

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

Executive Agency Records – The Public Records Act

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

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

> 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 connections 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."[6]

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[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

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

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

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

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

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[16] (the Act), prescribe a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] The Act requires the repeal of

[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST. art. I, s. 24(c).
[10] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[11] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[12] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[14] *Id*.
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[16] Section 119.15, F.S.
[17] 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.
[18] 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.

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

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.[20] An exemption serves an identifiable purpose if it meets one of the following purposes and the 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;[21]
- 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;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] 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.[25] 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.[26]

Geolocation Data

"Geolocation data is data collected via an electronic communications network or service that indicates the position of equipment used by people who are connected to the network or

[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.
[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] 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?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.

service."[27] Some technologies that collect geolocation date include global positioning system (GPS) units and smartphones. In addition to including information on "latitude, longitude, and altitude of the equipment," geolocation data can include the "time data was collected, direction of travel, and other detailed information."[28]

One concern identified with the use of geolocation data is that the "data can be used to identify people and discern details of where they live, work and travel, potentially enabling stalking and harassment and revealing sensitive destinations…."[29]

Geolocation Data on Law Enforcement Officers and Law Enforcement Vehicles

Geolocation data on a law enforcement officer may be available to the agency employing the officer. For example, an important source for location information on the officer could be an agency-issued or agency-owned cellphone.[30] The agency may have the ability to obtain location information from the cellphone provider either through a built-in GPS capability in the cellphone, a smart app, or through other available means. This location information may include real-time or historical location information.

Geolocation information on a law enforcement officer may also be available to the law enforcement agency if the officer is driving or riding in an agency-issued or agency-owned vehicle equipped with GPS technology or other means of locating the vehicle and tracking its movement.[31] There are multiple reasons why a law enforcement agency would track the location and movement of its vehicles including:

- "Identify[ing] which police vehicle is closest to a crime scene and [ensuring] those police officers stay within their assigned zone," which "can also be helpful if a police officer ever goes missing on the job";[32] and
- "[Providing] directions and up-to-date traffic information, helping police officers get to the scene of a crime or emergency sooner."[33]

Geolocation Data Relating to the Home Address of a Law Enforcement Officer

Section 119.071(4)(d)2.a., F.S., in part, provides a public records exemption for:

- The home addresses of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency;
- The home addresses and places of employment of the spouses and children of such personnel; and
- The locations of schools and day care facilities attended by the children of such personnel.

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[27] *Subcommittee on Cybersecurity, Privacy and Data: Geolocation Data*, Task Force on Autonomous Vehicles (Oregon), available at https://www.oregon.gov/ODOT/Get-Involved/Documents/Geolocation%20data%20ER%207-22.pdf (last visited on Jan. 27, 2022).
[28] *Id.*
[29] *Id.*
[30] *See* Marc Chase McAliister, *GPS and Cell Phone Tracking of Employees*, 70 Fla. L. Rev. 1265 (2019), available at https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1438&context=flr (last visited on Jan. 27, 2022).
[31] *Id.*
[32] *How Police Use GPS for Personal and Vehicle Tracking*, BrickHouse Security, available at https://www.brickhousesecurity.com/gps-trackers/how-police-use-gps/ (last visited on Jan. 27, 2022).
[33] *Id.*

The term "home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, *GPS coordinates, and any other descriptive property information that may reveal the home address.*[34]

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to make exempt from public inspection and copying requirements law enforcement geolocation information held by a law enforcement agency. The section defines the term "law enforcement geolocation information" as information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or a law enforcement vehicle. The section further provides that the exemption be applied retroactively.

Section 1 requires law enforcement agencies to disclose law enforcement geolocation information when requested by a state or federal law enforcement agency.

Section 1 specifies that the exemption does not apply to uniform traffic citations, crash reports, homicide reports, arrest reports, incident reports, or any other official reports issued by an agency which contain law enforcement geolocation information.

Section 1 provides that this new public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless the Legislature reviews and renews the exemption before that date.

Section 2 provides the following statement of public necessity for the exemption:

> [t]he Legislature finds that it is a public necessity that geolocation information of law enforcement officers and law enforcement vehicles be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution so that the safety of this state's law enforcement officers and the privacy of this state's residents may be reasonably assured. The Legislature recognizes that the regular and unregulated release of law enforcement geolocation information can pose a danger to officers while on patrol, can potentially result in the exposure of law enforcement officers' residences, can release otherwise exempt surveillance and investigative techniques, and can inadvertently disclose information about private residents which would otherwise be exempt. Therefore, the Legislature finds that it is a public necessity that law enforcement geolocation information be made exempt from public record requirements and that such exemption be applied retroactively.

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

[34] Section 119.071(4)(d)1.a., F.S. (emphasis provided by staff).

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 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 Florida Constitution requires a two-thirds vote of the members present and voting in each chamber for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates a new exemption for law enforcement geolocation information held by a law enforcement agency, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c), of the Florida Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is protect the release of law enforcement geolocation information because the regular and unregulated release of law enforcement geolocation information can pose a danger to officers while on patrol, can potentially result in the exposure of law enforcement officers' residences, can release otherwise exempt surveillance and investigative techniques, and can inadvertently disclose information about private residents which would otherwise be exempt. The bill exempts law enforcement geolocation information held by a law enforcement agency. The bill defines "law enforcement geolocation information" and also specifies records to which the exemption does not apply. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost, to the extent one is imposed, associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Law enforcement agencies will incur costs related to redaction of records in responding to public records requests to the extent law enforcement geolocation information are a component of a requested record.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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 Governmental Oversight and Accountability on February 2, 2022:
The CS adds a requirement that a law enforcement agency disclose law enforcement geolocation information when requested by a state or federal law enforcement agency. The CS also makes the bill take effect upon becoming a law.

B. Amendments:

None.

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

585-02656-22 20221046c1

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; defining the term "law enforcement geolocation information"; providing an exemption from public records requirements for law enforcement geolocation information held by a law enforcement agency; providing for retroactive application; providing applicability; requiring law enforcement agencies to disclose law enforcement geolocation information to state and federal law enforcement agencies, upon request; 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. Paragraph (e) is added to subsection (4) of section 119.071, Florida Statutes, to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(e)1. As used in this paragraph, the term "law enforcement geolocation information" means information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or a law enforcement vehicle.

2. Law enforcement geolocation information held by a law

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

585-02656-22 20221046c1

enforcement agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by an agency before, on, or after the effective date of the exemption. This exemption does not apply to uniform traffic citations, crash reports, homicide reports, arrest reports, incident reports, or any other official reports issued by an agency which contain law enforcement geolocation information. A law enforcement agency shall disclose law enforcement geolocation information upon request from a state or federal law enforcement agency.

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

Section 2. The Legislature finds that it is a public necessity that geolocation information of law enforcement officers and law enforcement vehicles be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution so that the safety of this state's law enforcement officers and the privacy of this state's residents may be reasonably assured. The Legislature recognizes that the regular and unregulated release of law enforcement geolocation information can pose a danger to officers while on patrol, can potentially result in the exposure of law enforcement officers' residences, can release otherwise exempt surveillance and investigative techniques, and can inadvertently disclose information about private residents which would otherwise be exempt. Therefore, the Legislature finds that it is a public necessity that law enforcement geolocation information be made

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

exempt from public record requirements and that such exemption be applied retroactively.

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

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

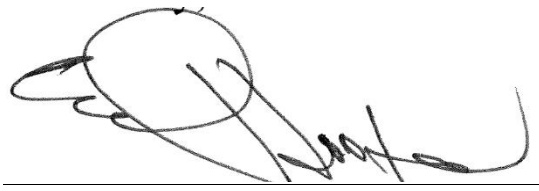
Date: February 2, 2022

I respectfully request that **Senate Bill # 1046**, relating to Public Records/Law Enforcement Geolocation Information, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

SB 1046 makes exempt from public inspection and copying requirements law enforcement geolocation information held by a law enforcement agency. The section defines the term "law enforcement geolocation information" as information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or a law enforcement vehicle. The section further provides that the exemption be applied retroactively.



Senator Ed Hooper
Florida Senate, District 16

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1054
INTRODUCER:	Senator Hutson and others
SUBJECT:	Financial Literacy Instruction in Public Schools
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Brick	Phelps	RC	**Favorable**

I. Summary:

SB 1054 is designated as the "Dorothy L. Hukill Financial Literacy Act."

The bill requires that, beginning with students entering grade 9 in the 2022-2023 school year, students must earn one-half credit in personal financial literacy and money management in order to receive a standard high school diploma.

The bill establishes financial literacy standards within the Next Generation Sunshine State Standards beginning in the 2022-2023 school year and thereafter. Financial literacy standards must, at a minimum, establish personal financial literacy and money management.

The bill takes effect July 1, 2022.

II. Present Situation:

Florida law requires the adoption of standards for core curricula content taught in public schools and specifies the requirements that students must meet to earn a standard high school diploma.[1]

Standard High School Diploma Requirements

In order to receive a standard high school diploma, a student must successfully complete 24 credits in core-curricula and extracurricular courses with a 2.0 or higher cumulative grade point

[1] Sections 1003.41 and 1003.4282(3), F.S.

average[2] with limited exceptions.[3] One of the courses within the 24 credits must be completed online.[4]

The 24 required credits must be completed in the following subject areas:[5]

- Four credits in English Language Arts (ELA) I, II, III, and IV.
- Four credits in mathematics, including one in Algebra I and one in Geometry.
- Three credits in science, two of which must have a laboratory component and one of which must include Biology I.
- Three credits in social studies including one credit in United States History, one credit in World History, one-half credit in economics, and one-half credit in United States Government.
- One credit in fine or performing arts, speech and debate, or practical arts.
- One credit in physical education which includes the integration of health.
- Eight credits in electives. School districts are required to develop and offer coordinated electives to enable a student to develop knowledge and skills in his or her area of interest and such electives must include opportunities for students to earn college credit.

Career and Technical Education Graduation Pathway Option

Students may also earn a standard high school diploma through the career and technical education pathway.[6] This pathway requires students to complete at least 18 credits, including:[7]

- Four credits in English Language Arts (ELA) I, II, III, and IV;
- Four credits in mathematics, including one in Algebra I and one in Geometry;
- Three credits in science, two of which must have a laboratory component and one which must include Biology I;
- Three credits in social studies including one credit in United States History, one credit in World History, one-half credit in economics, and one-half credit in United States Government;
- Two credits in career and technical education courses, resulting in a program completion and industry certification; and
- Two credits in work-based learning programs.

A student may substitute up to two credits of electives, including one-half credit in financial literacy, for work-based learning program courses to fulfill the work-based learning program requirements.[8] All credits required for graduation include courses that are identified by content-

[2] Section 1003.4282(6)(a), F.S.
[3] Section 1002.3105(5), F.S. A student may graduate with a minimum of 18 credit hours through the Academically Challenging Curriculum to Enhance Learning option if the student meets core course credit, assessment, and GPA requirements and completes three electives.
[4] Section 1003.4282(4), F.S.
[5] Section 1003.4282(3)(a)-(g), F.S.
[6] Section 1003.4282(10), F.S.
[7] Florida Department of Education, *CTE Pathway Option for a Standard High School Diploma*, https://www.fldoe.org/academics/career-adult-edu/career-tech-edu/pathways-option.stml (last visited Feb. 3, 2022).
[8] Section 1003.4282(10)(a)3., F.S.

area experts as aligning with Florida's Next Generation Sunshine State Standards for that subject.[9]

Next Generation Sunshine State Standards

The Next Generation Sunshine State Standards (NGSSS) establish the core content of the curriculum to be taught in Florida kindergarten through grade 12 public schools.[10] The standards must be rigorous and relevant to incrementally increase a student's core content knowledge and skills over time. The curricular content must integrate critical-thinking, problem-solving, and workforce-literacy skills; communication, reading, and writing skills; mathematics skills; collaboration skills; contextual and applied-learning skills; technology-literacy skills; information and media-literacy skills; and civic-engagement skills. The standards applicable to students in grades 9 through 12 may be organized by grade clusters that include more than one grade level except as otherwise provided for visual and performing arts, health and physical education, and foreign language standards.[11]

The State Board of Education is responsible for adopting the NGSSS and subsequent revisions to such standards.[12] Currently, the NGSSS must meet the following requirements:[13]

- English and Language Arts must establish specific curricular content for reading, writing, speaking and listening, and language.
- Science must establish specific curricular content for the nature of science, earth and space science, physical science, and life science.
- Mathematics must establish specific curricular content for algebra, geometry, statistics and probability, number and quantity, functions, and modeling.
- Social Studies must establish specific curricular content for geography, United States and world history, government, civics, humanities, economics, and financial literacy.
- Visual and performing arts, physical education, health, and foreign language must establish specific curricular content and include distinct grade level expectations for the core content knowledge and skills that a student is expected to have acquired by each individual grade level from kindergarten through grade 5. The standards for grades 6 through 12 may be organized by grade clusters of more than one grade level.

Financial Literacy in Florida Schools

Prior to 2019, financial literacy instruction was integrated into the NGSSS Social Studies standards and required within the one-half credit in economics to receive a standard high school diploma.[14] Financial literacy instruction included information regarding:[15]

- Earning income.
- Buying goods and services.

[9] Section 1003.4282(1)(b), F.S.
[10] Section 1003.41(1), F.S.
[11] *Id.*
[12] Section 1003.41(3)-(4), F.S. Standards are reviewed by educators, school administrators, representatives of Florida college institutions and universities, business and industry leaders, and the public. The Commissioner of Education must develop and submit revisions to the NGSSS as needed.
[13] Section 1003.41(2), F.S.
[14] Section 1003.41(2)(d), F.S. (2018) repealed s. 12 and 14, ch. 2019-119, L.O.F.
[15] *Id.*

- Saving and financial investing.
- Taxes.
- The use of credit and credit cards.
- Budgeting and debt management, including student loans and secured loans.
- Banking and financial services.
- Planning for one's financial future, including higher education and career planning.
- Credit reports and scores.
- Fraud and identity theft prevention.

All school districts are currently required to offer a financial literacy course consisting of at least one-half credit as an elective, however it is not a graduation requirement.[16] The 2021-2022 Course Code Directory[17] lists four one-half credit courses in economics with financial literacy, and two one-half credit courses in personal financial literacy.

III. Effect of Proposed Changes:

SB 1054 is designated as the "Dorothy L. Hukill Financial Literacy Act."

The bill modifies s. 1003.4282, F.S., to require that, beginning with students entering grade 9 in the 2022-2023 school year, students must earn seven and one-half credits in electives, and earn one-half credit in personal financial literacy and money management in order to receive a standard high school diploma. The bill retains the current requirement for a student to successfully complete 24 credits to earn a standard high school diploma, and retains current law for students who entered grade 9 before the 2022-2023 school year, which requires that such students earn 8 credits in electives.

The bill specifies financial literacy course instruction to include:

- Types of bank accounts offered, opening and managing a bank account, and assessing the quality of a depository institution's services;
- Balancing a checkbook;
- Basic principles of money management, such as spending, credit, credit scores, and managing debt, including retail and credit card debt;
- Completing a loan application;
- Receiving an inheritance and related implications;
- Basic principles of personal insurance policies;
- Computing federal income taxes;
- Local tax assessments;
- Computing interest rates by various mechanisms;
- Simple contracts;
- Contesting an incorrect billing statement;
- Types of savings and investments; and
- State and federal laws concerning finance.

[16] 1003.4282(8), F.S.

[17] The Course Code Directory lists all public PreK-12 and postsecondary career and technical education courses that are available for use by school districts. Rule 6A-1.09441, F.A.C.

The bill modifies s. 1003.41, F.S., to require that the financial literacy standards within the Next Generation Sunshine State Standards must, beginning for students entering grade 9 in the 2022-2023 school year and thereafter, establish curricular content for, at a minimum, personal financial literacy, money management, and specified instructional areas in the required half-credit course in personal financial literacy.

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:

The bill does not impact state revenues or state expenditures. However, there may be an impact to districts to create and incorporate the half-credit financial literacy course that would be required for high school students who enter grade 9 beginning with the 2022-2023 school year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 1003.41, 1003.4282 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

263118

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 48 - 98

and insert:

and financial literacy. Beginning with the 2022-2023 school year, financial literacy standards must establish specific curricular content for, at a minimum, personal financial literacy and money management and include instruction in the areas specified in s. 1003.4282(3)(g)2.

Section 3. Paragraph (g) of subsection (3) of section 1003.4282, Florida Statutes, is amended to read:

263118

1003.4282 Requirements for a standard high school diploma.—

(3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT REQUIREMENTS.—

(g)1. *Eight Credits in electives.*—School districts must develop and offer coordinated electives so that a student may develop knowledge and skills in his or her area of interest, such as electives with a STEM or liberal arts focus. Such electives must include opportunities for students to earn college credit, including industry-certified career education programs or series of career-themed courses that result in industry certification or articulate into the award of college credit, or career education courses for which there is a statewide or local articulation agreement and which lead to college credit.

2. Beginning with the 2022-2023 ~~2019-2020~~ school year, all school districts must offer a financial literacy course consisting of at least one-half credit as an elective that includes instruction in:

a. Types of bank accounts offered, opening and managing a bank account, and assessing the quality of a depository institution's services.

b. Balancing a checkbook.

c. Basic principles of money management, such as spending, credit, credit scores, and managing debt, including retail and credit card debt.

d. Completing a loan application.

e. Receiving an inheritance and related implications.

f. Basic principles of personal insurance policies.

g. Computing federal income taxes.

263118

h. Local tax assessments.
i. Computing interest rates by various mechanisms.
j. Simple contracts.
k. Contesting an incorrect billing statement.
l. Types of savings and investments.
m. State and federal laws concerning finance.

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

And the title is amended as follows:

Delete lines 6 - 13

and insert:

State Standards; amending s. 1003.4282, F.S.; specifying instruction that must be included in financial literacy courses beginning with a specified school year; providing an effective date.

By Senator Hutson

7-00820-22 20221054__

A bill to be entitled

An act relating to financial literacy instruction in public schools; providing a short title; amending s. 1003.41, F.S.; revising the requirements regarding financial literacy for the Next Generation Sunshine State Standards; amending s. 1003.4282, F.S.; revising the required credits for a standard high school diploma to include one-half credit of instruction in personal financial literacy and money management and seven and one-half, rather than eight, credits in electives; specifying the requirements of the one-half credit of instruction in personal financial literacy and money management; providing an effective date.

WHEREAS, many young people in this state graduate from high school without having basic financial literacy or money management skills, and

WHEREAS, the Legislature finds that, in light of economic challenges nationwide, sound financial management skills are vitally important to all Floridians, particularly high school students, and

WHEREAS, the Legislature also finds that requiring educational instruction in financial literacy and money management as a prerequisite to high school graduation will better prepare young people in this state for adulthood by providing them with the requisite knowledge to achieve financial stability and independence, and

WHEREAS, 21 states in the nation require financial literacy instruction as a prerequisite for high school graduation and a

standard high school diploma, and the adoption of this act will make Florida the seventh state in the nation to require a stand-alone course in personal financial literacy as a prerequisite for high school graduation and a standard high school diploma, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Dorothy L. Hukill Financial Literacy Act."

Section 2. Paragraph (d) of subsection (2) of section 1003.41, Florida Statutes, is amended to read:

1003.41 Next Generation Sunshine State Standards.—

(2) Next Generation Sunshine State Standards must meet the following requirements:

(d) Social Studies standards must establish specific curricular content for, at a minimum, geography, United States and world history, government, civics, humanities, economics, and financial literacy. Effective for students entering grade 9 in the 2022-2023 school year and thereafter, financial literacy standards must establish specific curricular content for, at a minimum, personal financial literacy and money management and include instruction in the areas specified in s. 1003.4282(3)(h).

Section 3. Paragraph (g) of subsection (3) of section 1003.4282, Florida Statutes, is amended, and paragraph (h) is added to that subsection, to read:

1003.4282 Requirements for a standard high school diploma.—

(3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT

REQUIREMENTS.—

(g) ~~*Eight*~~ *Credits in electives.*—School districts must develop and offer coordinated electives so that a student may develop knowledge and skills in his or her area of interest, such as electives with a STEM or liberal arts focus. Such electives must include opportunities for students to earn college credit, including industry-certified career education programs or series of career-themed courses that result in industry certification or articulate into the award of college credit, or career education courses for which there is a statewide or local articulation agreement and which lead to college credit. A student entering grade 9 before the 2022-2023 school year must earn eight credits in electives. A student entering grade 9 in the 2022-2023 school year or thereafter must earn seven and one-half credits in electives ~~Beginning with the 2019-2020 school year, all school districts must offer a financial literacy course consisting of at least one-half credit as an elective~~.

(h) *One-half credit in personal financial literacy.*— Beginning with students entering grade 9 in the 2022-2023 school year, each student must earn one-half credit in personal financial literacy and money management. This instruction must include discussion of or instruction in all of the following:

1. Types of bank accounts offered, opening and managing a bank account, and assessing the quality of a depository institution's services.

2. Balancing a checkbook.

3. Basic principles of money management, such as spending, credit, credit scores, and managing debt, including retail and credit card debt.

4. Completing a loan application.

5. Receiving an inheritance and related implications.

6. Basic principles of personal insurance policies.

7. Computing federal income taxes.

8. Local tax assessments.

9. Computing interest rates by various mechanisms.

10. Simple contracts.

11. Contesting an incorrect billing statement.

12. Types of savings and investments.

13. State and federal laws concerning finance.

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

2/15/22
Meeting Date

Rules
Committee

1054
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:

CFO JIMMY PATRONIS

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/2022
Meeting Date

Senate Rules
Committee

SB 1054
Bill Number or Topic

Amendment Barcode (if applicable)

Name Damian Jané

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:
Miami-Dade County Public Schools

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

1/5/22
Meeting Date

Rules
Committee

SB 1054
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shan Goff

Phone 850-544-6138

Address 150 S Monroe St
Street

Email shan@speelandlaw.com

Tall 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: Foundation for Florida's Future

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2022 1:00
Meeting Date

Rules
Committee

1054
Bill Number or Topic

Amendment Barcode (if applicable)

Name Dannie McMillon

Phone 407-855-7604

Address 1747 Orlando Central Pkwy
Street

Email legislation@floridapia.org

Orlando FL 32809
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-15-22
Meeting Date

Rules
Committee

1054
Bill Number or Topic

Amendment Barcode (if applicable)

Name Doug Bell

Phone 850 205 9000

Address 119 S. Monroe St
Street

Email doug.bell@mhdfirm.com

TLH
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:

Business Law Section, Florida Bar

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SR 1064
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Garcia
SUBJECT:	United States Department of State's List of Foreign Terrorist Organizations
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Caldwell	MS	**Fav/CS**
2.	Lloyd	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SR 1064 expresses the Florida Senate's commitment to a stable and prosperous Colombia. This assistance includes Florida's support for peace, security, and prosperity and opposition to terrorist groups and those who give aid to terrorist groups. CS/SR 1064 further expresses the Florida Senate's opposition to the Revolutionary Forces of Colombia (FARC)'s removal from the designated terror organization list. The resolution provides that the Florida Senate will use all means possible, including divesture, to impede ties, commercial or otherwise, with FARC.

II. Present Situation:

The United States Department of State, specifically the Secretary of State, is authorized to administer and enforce the immigration and nationality laws of the nation, including those laws which affect the nationality of a person not in the United States[1] which also includes the designation of organizations as foreign terrorist organizations. A foreign terrorist organization has been defined in federal law to mean an organization that includes two or more individuals who engage in any of the following activities which are considered terrorist activities:

[1] Immigration and Nationality Act, 8 U.S.C. §1104(a), (2021 Ed. Supp. and Supp. II (1/31/2021)), available at https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1104&num=0&edition=prelim (last visited January 3, 2022).

- Commit or incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;[2]
- Endorse or espouse terrorist activity or persuades others to endorse or espouse terrorist activity or to support a terrorist organization;
- Has received military-type training[3] from or on behalf of an organization that, at the time the training was received, met the definition of a terrorist organization;
- Is the spouse of or a child of an individual who would be inadmissible to the United States, if this activity occurred within the last five years; or
- Is a member if a terrorist organization unless the individual can demonstrate by clear and convincing evidence that he or she should not have reasonably known that the organization was a terrorist organization.[4]

If the Secretary of State determines that an organization has engaged in terrorist activity as described above or terrorism as defined in the *Foreign Relations Authorization Act*,[5] the Secretary is statutorily authorized to designate the organization or the individual as a terrorist organization or a terrorist. Such a designation would require notice to Congress, publication in the Federal Register, and the notification to financial institutions to the freeze assets of the designated organizations and individuals.[6]

Besides these designations, the United States may use other classifications to identify and attempt to prohibit the entry of certain individuals into the country or inhibit their growth and access to financial and other resources. Identifying an individual as *Specially Designated Global Terrorist* (SDGT) will result in notifications to the public and international financial community impeding the individual's or an organization's ability to conduct transactions in this country, including access to any property and banking interests.[7] The Department of the Treasury maintains several databases of individuals and companies which are updated regularly and individuals and organizations have the ability to seek judicial review of their placement on the lists.[8]

Executive Order 13224, As Amended, and Other Presidential Authorities

Following a series of terrorist attacks in the United States, a national emergency was declared by President George Bush on September 23, 2001, under Executive Order 13224 (EO), as

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[2] A terrorist activity is defined as those actions which are covered by the definition of a "terrorist activity" under 8 U.S.C. §1182(a)(3)(B), available at https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim (last visited January 3, 2022).
[3] Military type training received from or on behalf of an organization which meets the definition of a terrorist organization must meet the requirements of section 2339(D)(c)(1) of Title 18.
[4] 8 U.S.C. §1182(a)(3)(B)(2018 Ed. Supp. and Supp. II (1/31/2021).
[5] Under the *Foreign Relations Act*, (Pub. L. No. 100-204, s. 140, 22 U.S.C. 2656f), terrorism is defined as premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents. International terrorism is defined to specifically mean involving citizens or territory of more than one country.
[6] 8 U.S.C. §1189(a)(2018 Ed. Supp. and Supp. II (1/31/2021).
[7] United States Department of the Treasury, *Frequently Asked Questions – Specially Designated Nationals and SDN List, available at https://home.treasury.gov/policy-issues/financial-sanctions/faqs/topic/1631* (last visited January 3, 2022).
[8] United States Department of the Treasury, Office of Foreign Assets Control – Sanctions Programs and Information, *available at* https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information (last visited January 3, 2022).

amended,[9] pursuant to the powers vested in the President of the United States by the Constitution and the laws of the United States of America, including but not limited to, the *National Emergencies Act,*[10] *International Emergency Economic Powers Act (IEEPA)*[11], section 5 of the *United Nations Participation Act of 1945, as amended*[12] *(UNPA),* and several United Nations Security Council Resolutions.[13] This EO was issued to address continuing threats to the national security, foreign policy, and the economy of the United States.

The IEEPA further authorizes the President to regulate and exert control over the nation's domestic and international economic transactions during an emergency, in consultation with Congress, and in alignment with the provisions of the *National Emergencies Act.*[14] The initial and ongoing authorizations under both of these Acts are published, when declared by the President or other authorized officials, in the *Federal Register.* The threats identified in that specific executive order have been reviewed annually by Congress and continued each year since its first renewal in 2002 in accordance with the notice and timing provisions of the *IEEP*.[15]

National Emergencies Act

Under the *National Emergencies Act,* the President is required to consult with Congress in advance in every possible instance and to continue that consultation process as long as such authorities are exercised by the President. In exercising these authorities, the President must also provide:

- Regular periodic reports to Congress on the use of any Presidential authorities pursuant to the *Executive Order* as to the justification, in whole or in part, for the action;
- Explanations as to why the circumstances constituted an unusual and extraordinary threat which had its source in whole or substantial part outside the United States, to the national security, foreign policy, economy of the United States;

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[9] Executive Order 13224, as amended, was issued on September 23, 2001 by then-President George W. Bush. The Executive Order declared a national emergency to deal with foreign terrorists and foreign terrorist organizations who posed a grave danger to the United States, its national security, foreign policy, and its economy. The Executive Order sought to block the assets of individuals and entities who provided support, services, or assistance to terrorists or terrorist organizations, including their affiliates, front organizations, associates, and subsidiaries.

[10] National Emergencies Act (originally enacted as Pub. L. 94-412, Sept. 14. 1976); 50 U.S.C. §1601, *et seq., (*2018 Ed. Supp. and Supp. II (1/31/2021)), *available at* https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter34&edition=prelim (last visited December 29, 2021).

[11] International Emergency Economic Powers Act (IEEP); 50 U.S.C. §1701(2018 Ed. and Supp. II (1/31/2021)), *available at* https://uscode.house.gov/browse/prelim@title50/chapter35&edition=prelim (last visited January 4, 2022).

[12] United Nations Participation Act (UNPA) (originally enacted as Pub. L. 89-206, Sept. 28, 1965); 22 U.S.C. §287c, (2018 Ed. and Supp. II (1/31/2021), *available at* https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter7/subchapter16&edition=prelim (last visited December 29, 2021).

[13] The United Nations Security Council Resolutions (UNSCR) which were in effect concurrently or overlapped with that of different EO's noticed national emergency time periods were UNSCR 1214 of December 8. 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the sanctions contained within, and UNSCR 1363 of July 30, 2001, which established the mechanism by which the sanctions of the various UNSCRs could be monitored.

[14] International Emergency Economic Powers Act (IEEP), *Supra*, note 11at §1703.

[15] 50 U.S.C. §1622(d) (2018 Ed. and Supp. II (1/31/2021), *available at* https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title50-section1622&num=0&saved=L3ByZWxpbUB0aXRsZTUwL2NoYXB0ZXIzNA%3D%3D%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGU1MC1jaGFwdGVyMzQ%3D%7C%7C%7C0%7Cfalse%7Cprelim (last visited December 27, 2021).

- Rationale for why the authorities to be exercised and the actions to be taken deal with those circumstances;
- Description of why the President believes the actions are necessary to deal with those circumstances;
- Identification of any foreign countries with respect to where any such actions are to be taken and why such actions are to be taken with respect to those countries.[16]

National emergencies declared by the President are immediately transmitted to Congress and published in the *Federal Register*.[17] An annual report is also sent from the Secretary to the Speaker of the House of Representatives and the Senate Committee on Foreign Relations by April 30th which provides a detailed assessment of each foreign country's acts of foreign terrorism which were considered of major significance in the Secretary's opinion, including acts of international terrorism which Congress was notified about in the past five years pursuant to terrorist activity where United States Citizens were killed in areas administered by either Israel or the Palestinian Authority, and any other information the Secretary determines should be included in the report.[18]

Revolutionary Forces of Colombia – (FARC)

In November 2021, the Secretary released changes to the foreign terrorist designations list and among those modifications was the revocation of a Colombian group, the *Revolutionary Forces of Colombia (FARC),* designation as a Foreign Terrorist Organization (FTO); a designation held since October 1997.[19] FARC had previously sought removal of the designation which had been denied. Such statuses are reviewed on a five-year cycle.[20]

Formed in 1964, FARC was Colombia's largest rebel group known as a guerrilla organization focused on overthrowing the Colombian government, redistributing the country's wealth, and fighting inequality.[21] The organization was also known for drug trafficking, murder, bombings, extortions, and kidnappings. The European Union had removed FARC from its equivalent designated terrorist list following the signed peace agreement in 2016 having only placed FARC on the list in 2002 when the European Union designated terrorist list originated.[22]

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[16] Periodic follow-up reports to Congress are expected once every succeeding six months when an exercise of authorities has occurred. These reports are considered supplemental to any reports required under the *National Emergencies Act. See* 50 U.S.C. §1703(c) (2018 Ed. Supp. and Supp. II (1/31/2021).

[17] 50 U.S.C. 1621 (2018 Ed. Supp. and Supp. II. (1/31/2021); *available at* https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter34/subchapter1&edition=prelim (last visited December 28, 2021).

[18] 22 U.S.C. §2656f (Annual country reports on terrorism)(2018 Ed. Supp. and Supp. II (1/31/2021)) *available at* https://uscode.house.gov/view.xhtml?req=(title:22%20section:2656f%20edition:prelim (last visited December 29, 2021).

[19] Designation of Foreign Terrorist Organizations, 62 Fed. Reg. 52650, 52650 (October 8, 1997).

[20] Designation of Foreign Terrorist Organizations, 8 U.S.C. §1189(a)(4)(C) (2018 Ed. Supp and Supp. II (1/31/2021)), *available at* https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1189&num=0&edition=prelim (last visited December 29, 2021).

[21] Who are the FARC?, BBC.com, *available at* https://www.bbc.com/news/world-latin-america-36605769 (last visited December 29, 2021).

[22] Sputnik International, *EU Suspends Sanctions Against FARC After Colombia Signs Peace Deal With Rebels,* (September 27, 2016), *available at* https://sputniknews.com/20160927/eu-suspends-sanctions-farc-1045733938.html (last visited December 29, 2021).

A ceasefire and Peace Accord were finally signed in 2016 after several failed attempts, and as a condition of that Peace Accord, FARC demobilized and disarmed itself. Some dissidents disagreed with the Peace Accord and retained the FARC name and continued with the illegal activities and re-armed themselves. Those members of FARC who disarmed formally dissolved FARC and have changed its name to "Comunes" or as translated in English to "Commons," in January 2021 in an attempt to move away from a guerilla group with the same name and its past.[23] The new organization has been granted seats in Congress in accordance with the Peace Accord and elections will occur in March 2022.[24] Prior commanders and leaders once involved with the disbanded FARC, however, are not excused from their past crimes and remain on the terrorist list for both their past and any future activities.[25]

Additional organizations, the *Revolutionary Armed Forces of Colombia – People's Army (FARC – EP)* and *Segunda Marquetalia*, which developed after the Peace Accord and have continued to mobilize and engage in terrorist activity according to the Department of State, have been found responsible for the killing of former FARC members other community leaders.[26] *Segunda Marquetalia* has been identified as another organization, along with *FARC-EP* involved in the kidnappings and ransoming of government employees, attempted killings of political leaders, and engaging in mass destruction and assassinations.[27] These two organizations were added to the *Foreign Terrorist Organizations List* as FARC's designation was revoked on November 30, 2021.[28] The leaders of the newly added organizations, Luciano Marin Arango, Hernan Dario Valasquez Saldarriaga, Henry Castellanos Garzon, Nestor Gregorio Fernandez, Miguel Santanilla Botache, and Euclides Espana Caicedo have also been newly designated as SDGTs under EO 13224, as amended.[29]

Florida's Excluded Vendor and Scrutinized Companies Provisions

As organizations are designated as terrorist organizations at the national level, the State of Florida is also identifying organizations to ensure such entities and individuals are barred from receiving state material support or resources as state vendors.[30] To be eligible to conduct business with the State of Florida:

- Vendors must register with Florida Department of State's Division of Corporations and the MyFloridaMarketPlace;
- Have a copy of their E-Verify status and current W-9 filed with the Department of Financial Services, and

[23] Radina Gigova and Fernando Ramos, *Colombia's FARC Party is Changing its Name to 'Comunes,"* CNN.com, *available at* https://www.cnn.com/2021/01/25/world/colombia-farc-changes-name-intl/index.html (last visited December 29, 2021).
[24] *Id.*
[25] Antony J. Blinken, United States Department of State, *Revocation of the Terrorist Designations of the Revolutionary Armed Forces of Colombia (FARC) and Additional Terrorist Designations,* November 30, 2021, *available at:* https://www.state.gov/revocation-of-the-terrorist-designations-of-the-revolutionary-armed-forces-of-colombia-farc-and-additional-terrorist-designations/ (last visited December 28, 2021).
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] Section 775.33, F.S.

- Not be listed on the State of Florida's Convicted, Suspended, or Discriminatory List.[31]

Standard contract provisions in all state contracts prohibit the use of any vendors, suppliers, contractors, subcontractors, or consultants who appear on the state's suspended vendor list, convicted vendor list, or discriminatory vendor list.[32] Those categories are explained in the chart provided below. Entities and individuals have the right to request an administrative hearing about placement on the discriminatory vendor list.[33]

Type of Vendor	Statutory Citation	Explanation
Convicted Vendor	287.133, F.S.	A finding of guilt of a public entity crime[34], with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or nolo contendere plea.
Discriminatory Vendor	287.134, F.S.	A determination of liability by a state or federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion has been successfully made against the vendor.
Scrutinized Companies	287.135, F.S.	Prohibition against contracting with certain scrutinized companies on the Scrutinized Company List and: - Engaged in a Boycott of Israel; - Contracted greater than $1 million with activities in the Sudan or in the Iran Petroleum Energy Sector List; or - Engaged in business operations in Cuba or Syria.
Suspended Vendor	287.1351, F.S.	A vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated a recent inability to fulfill the terms and conditions of previous state contracts or to adequately perform its duties under those contracts. A suspended vendor may not submit a bid, proposal, or reply to an agency or enter into a renewal after being placed on the suspended vendor list.

[31] *See* Department of Management Services, *Doing Business with the State of Florida Checklist,* https://www.dms.myflorida.com/content/download/147572/983242/Doing_Business_with_the_State_of_Florida_-_Vendor_Communication_7.2.19.pdf (last visited December 29, 2021).
[32] *See* Sample State Term Contract, Section 5; Compliance with Laws (State Term Contract), (copy of Department of Management Services' Standard State Term Contract on file with Committee on Military and Veterans Affairs, Space, and Domestic Security as of January 4, 2022). *See also* copies of executed state term contracts at *State Contracts and Agreements, Department of Management Services,* State Contracts and Agreements / State Purchasing / Business Operations / Florida Department of Management Services - DMS (myflorida.com) (last viewed January 3, 2022).
[33] Section 287.134(3)(a), F.S.
[34] A public entity crime is defined as a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with any agency or public subdivision or any other state or with the United States, including but not limited to any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation. *See* section 287.133(g), F.S.

The state has also defined statutorily "terrorist" and "terrorist organization" by cross referencing its definition to the federal definition of a "terrorist organization" under section 219 of the Immigration and Nationality Act (INA).[35]

Under the federal definition, whichever organizations or individuals named by the Secretary of State to the Designation of Foreign Terrorist Organizations are the entities that meet the statutory definition. The designation takes effect upon publication in the *Federal Register* and is effective until revoked with a chance for the organization or individual to seek a review upon petition at specified intervals.[36]

Ongoing Divesture of State Funds

In addition to the procurement and purchasing protections, current state law also directs the State Board of Administration to identify to the best of its abilities all scrutinized companies in which public funds are held, including those countries which are designated state sponsors of terror.[37]

III. Effect of Proposed Changes:

CS/SR 1064 provides historical background between the United States and Colombia within the context of FARC's role in that history through a series of opening whereas clauses.

CS/SR 1064 declares the Florida Senate's opposition to the removal of FARC from the list of designated terrorist organizations and condemns any regime in any country which gives aid to terrorist groups in Colombia through providing training, weapons, funding, or by hosting those groups within its borders.[38] The resolution explicitly declares Florida's opposition to any further efforts to change the status of countries such as Cuba or Iran in a like manner.

CS/SR 1064 further expresses the state's interest in using all means possible, including divestiture to impede ties, commercial or otherwise, with FARC.

CS/SR 1064 recognizes that a stable and prosperous Colombia serves the needs of the Colombian people and the interests of Florida in Latin America.

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[35] The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that:–

(A) The organization is a foreign organization;

(B) The organization engages in a terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22. U.S.C.) or retains the capability and intent to engage in terrorist activity; and

(C) The terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

[36] Designation of Foreign Terrorist Organizations, 8 U.S.C. §1189 (2018 Ed. Supp. and Supp. II (1/31/2021)).

[37] Section 215.473(2) and (3), F.S.

[38] On November 30, 2021, the Department of State revoked the designation of the Revolutionary Forces of Colombia (FARC) as a foreign terrorist organization under the Immigration and Nationalization Act (INA) and as a Specially Designated Global Terrorist (SDGT) pursuant to Executive Order 13224, as amended. See Revocation of the Terrorist Designations of the Revolutionary Armed Forces of Colombia (FARC) and Additional Terrorists Designations, A Press Statement by Anthony J. Blinken, Secretary of State, November 30, 2021, https://www.state.gov/revocation-of-the-terrorist-designations-of-the-revolutionary-armed-forces-of-colombia-farc-and-additional-terrorist-designations/ (last visited December 27, 2021). The Department of State added the designation of FTO and SDGT to the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) and Segunda Marquetella. The respective leaders of these organizations were also added to the same lists.

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:

To the extent that keeping FARC on the designated terrorist organization list would help Colombia reduce and eliminate public integrity fraud, corruption, murder, torture, kidnapping, and the gross violation of human rights, the private sector in Colombia may impact on improved living and working conditions in Colombia thus creating a better environment for commercial markets that were free from terrorist organizations. This change in working and living conditions in Colombia may have a trickle-down effect on goods and services received from Colombia in the United States in the extended future. The impact on the United States' private sector is unknown.

C. Government Sector Impact:

When the United States removed FARC from the designated terrorist organization list, supporters announced the action as a step forward for the now re-branded, re-named, political group, COMMON. The action was seen as a step which would allow them to be eligible for aid and assistance from the United States as the group continues work on the 2016 peace agreement. Being eligible for grants and assistance may accelerate the implementation of certain elements of the peace agreement. Those impacted by the change also identified the stigmatization of prior combatants and that revocation would assist with the continued assimilation of these individuals into the community.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

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

CS by Military and Veterans Affairs, Space, and Domestic Security on February 1, 2022:
The Senate Committee on Military and Veterans Affairs, Space, and Domestic Security adopted a CS/SR 1064 which:

- Reflected on FARC's removal from the Foreign Terrorist Organizations list;
- Expressed the Florida Senate's opposition to any future change in the current status of Iran and Cuba by the Department of State;
- Condemned any country which gives aid to Columbia through training, weapons, or hosting troops within their border;
- Encouraged the Florida Senate to use all means possible to impede ties, commercial or otherwise with FARC; and
- Recognized that a stable and prosperous Colombia serves the Colombian people first, but also Florida's interests in Latin America.

B. Amendments:

None.

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

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Garcia

Senate Resolution

A resolution opposing the Biden Administration's removal of the Revolutionary Armed Forces of Colombia (FARC) from the United States Department of State's list of Foreign Terrorist Organizations.

WHEREAS, Colombia is among the oldest standing democracies in Latin America, and

WHEREAS, the United States established diplomatic relations with Colombia in 1822, and

WHEREAS, Colombia is a constitutional republic where the people of Colombia hold the power and elect representatives to exercise that power, and

WHEREAS, the United States Department of State placed the Revolutionary Forces of Colombia (FARC) on the list of Foreign Terrorist Organizations in 1997, and

WHEREAS, after many years of violence and armed conflict, in 2022, Colombia is the United States' strongest ally in Latin America, and

WHEREAS, with the support of the United States and the State of Florida, Colombia has transformed itself from a volatile and near-failed state in 2001 into a rich democracy with a growing free market in 2022, and

WHEREAS, May 15, 2022, will mark the 10-year anniversary of the United States-Colombia Trade Promotion Agreement, which has supported economic growth and employment opportunities in Colombia, the United States, and the State of Florida, and

WHEREAS, the State of Florida is responsible for roughly a quarter of all trade between the United States and Colombia, and

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

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WHEREAS, the United States, the State of Florida, and Colombia share a commitment to promoting security, prosperity, human rights, and democracy in Colombia and across the Western Hemisphere, and

WHEREAS, in recent years, the Colombian government has taken courageous steps to enforce the law, stop drug traffickers, and rein in foreign terrorist organizations like the National Liberation Army (ELN) and FARC, and

WHEREAS, the State of Florida continues to support the efforts of the Colombian government for peace, its support for human rights defenders, its provision of greater educational opportunities, its increases in public and private investments, and its respect for human rights and the rule of law, and

WHEREAS, the United States maintains a strong commitment to cooperating with the Colombian government to investigate, arrest, and prosecute members of transnational criminal organizations and to dismantle terrorist groups like the ELN, FARC, and Hezbollah, whose illicit activities, specifically narcotrafficking, devastate Colombian and other Latin American societies, and

WHEREAS, Colombia is an essential partner with the United States in continuing efforts to support the courageous people of Venezuela in their fight for freedom, democracy, and economic prosperity against the dictatorship of Nicolás Maduro, and

WHEREAS, enemies of freedom, such as the communist regime in Cuba and the Maduro regime in Venezuela, exploit and abuse vulnerable individuals and promote violent unrest, vandalism, and destruction of property against individuals simply asking to be heard, and

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

WHEREAS, the Biden Administration revoked the designation of FARC as a foreign terrorist organization in November 2021, and

WHEREAS, FARC has murdered, tortured, and kidnapped innocent Colombians and committed gross violations of human rights, and

WHEREAS, FARC opposes democratic institutions and those who have fought for them, and

WHEREAS, FARC has committed and supported terrorism and continues to do so, and

WHEREAS, the Colombian electorate in 2016 voted against a referendum that would have enacted a deal with FARC, and

WHEREAS, the Colombian government later ratified an agreement with FARC without the approval of the electorate, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Florida Senate declares its firm commitment to Colombia, the United States' strongest ally in Latin America, and opposes the Biden Administration's removal of FARC from the list of Foreign Terrorist Organizations.

BE IT FURTHER RESOLVED that the Florida Senate condemns any regime in any country, such as Cuba, Venezuela, and Iran, which gives aid to terrorist groups in Colombia by providing training, weapons, or funding or by hosting those groups within its borders.

BE IT FURTHER RESOLVED that the Florida Senate opposes any effort to change the State Department designations of Cuba and

Iran from their current designations as State Sponsors of Terrorism.

BE IT FURTHER RESOLVED that the Florida Senate has heard the concerns of Colombian Americans living in Florida, many of whom have been victims of FARC.

BE IT FURTHER RESOLVED that the Florida Senate will use all means possible, including divestiture if applicable, to impede ties, commercial or otherwise, with FARC.

BE IT FURTHER RESOLVED that the Florida Senate recognizes that a stable and prosperous Colombia serves the Colombian people first and foremost, but also serves the State of Florida's interests in Latin America.

The Florida Senate

APPEARANCE RECORD

1064

Meeting Date

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

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Jess M. McCarty, Executive Assistant County Attorney Phone 305-979-7110

Address 111 NW 1st Street Email jmm2@miamidade.gov

Street

Miami FL 33128

City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

Miami-Dade County

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

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

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 1066
INTRODUCER:	Banking and Insurance Committee and Senator Burgess and others
SUBJECT:	Workers' Compensation Benefits for First Responders
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Hunter	Ryon	CA	**Favorable**
3.	Johnson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1066 expands compensability of first responders, as it relates to workers' compensation, by revising the deadline for first responders to file a notice of injury with their carrier or employer. The bill provides that the time of notice of injury is measured from one of the qualifying events or diagnosis of the disorder, whichever is later. Further, the bill provides that a claim is barred if the notice is not filed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later. Current law provides the time for notice of injury or death is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. A claim must be noticed within 52 weeks after the qualifying event. The bill would eliminate the 52-week deadline for filing a claim.

The potential fiscal impact on the State Risk Management Trust Fund could be significant based on the number of first responders employed by state agencies and universities. The bill will have a fiscal impact on local governments; however, the magnitude of the impact is indeterminate.

II. Present Situation:

In recent years, the issue of mental health has taken an even more prominent position in discussions across the country given the potential effects of the pandemic on first responders, healthcare workers, and others.[1] While first responders face the possibility of physical harm from

[1] NCCI, 2021 State of the Line Guide, Mental-Mental Injuries and Workers Compensation, available at 2021 State of the Line Guide (ncci.com) (last visited Jan. 29, 2022).

environmental and other exposures, their work may also negatively affect their mental health.[2] Pre-existing mental health conditions may be exacerbated and new mental health conditions may arise due to extremely stressful working conditions.[3]
Future costs for expanded PTSD coverage is a concern for some state and local governments.[4] While treatment of PTSD is critical, the addition of PTSD coverage for select groups of state and local government employees introduces a new area of care less focused on physical treatment, the traditional type of workers' compensation care, and more focused on mental health treatment.[5]

Post-Traumatic Stress Disorder (PTSD)

The American Psychiatric Association provides diagnostic criteria for mental disorders, including PTSD, in its *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (*DSM-5). PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault.[6] A diagnosis of PTSD requires exposure to an upsetting traumatic event; however, exposure can be indirect rather than first hand.[7] Symptoms fall into the following four categories: intrusion, avoidance, alterations in cognition and mood, and alterations in arousal and reactivity.[8] In order to diagnose a person with PTSD, symptoms must last for more than a month and must cause significant distress or problems in the individual's daily functioning.[9]

Many individuals develop symptoms within three months of the trauma; but symptoms may appear later and often persist for months and sometimes years.[10] Further, PTSD often occurs with other related conditions, such as depression, substance use, memory problems and other physical and mental health problems.[11] One study noted that the onset of PTSD symptoms is usually in the first month after the traumatic event; however, in about 15 percent of the cases, there may be a delay of months or years before symptoms appear.[12] At least a third of the individuals who initially develop PTSD remain symptomatic for three years or longer, and are at risk of secondary problems such as substance abuse.[13]

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[2]Johns Hopkins Public Health Awareness Programs, *First Responders, Mental Health Services, and the Law* (Apr. 25, 2013) available at FirstResp_MHSvcs.pdf (jhsph.edu) (last visited Jan. 29, 2022).
[3] *Id.*
[4] Optum, *States continue with PTDS and presumption coverage raising concerns over future impact* (Jun. 24, 2020), available at PTSD Awareness (optum.com) (last visited Jan. 29, 2022).
[5] *Id.*
[6] *See* American Psychiatric Association, *What is Posttraumatic Stress Disorder? Available at What Is PTSD? (psychiatry.org) (*Aug. 2020*) (*last visited Jan. 29, 2022).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Supra* at note 6.
[11] *Id.*
[12] National Collaborating Centre for Mental Health (UK). *Post-Traumatic Stress Disorder: The Management of PTSD in Adults and Children in Primary and Secondary Care.* Leicester (UK): Gaskell; (2005 updated 2018) available at Post-traumatic stress disorder - Post-Traumatic Stress Disorder - NCBI Bookshelf (nih.gov) (last visited Jan. 29, 2022).
[13] *Id.*

Prevalence Rate

The exact prevalence rate for PTSD is difficult to ascertain. About 15 million adults will have PTSD during a given year.[14] About six or seven percent of the population will have PTSD at some point in their lives.[15] About eight percent of females develop PTSD during their lives compared with about four percent of males.[16] The number of veterans with PTSD varies by service era. An estimated 30 percent of Vietnam veterans have had PTSD in their lifetime.[17] In contrast, about 13-14 percent of Gulf War veterans have PTSD in a given year.[18]

Although estimates vary across occupations and the general population, some studies indicate that first responders and other professionals who are exposed to potentially traumatic events in their workplace are four to five times more likely to develop PTSD compared to the general population.[19] An estimated 30 percent of first responders develop behavioral health conditions, including depression and PTSD, as compared with 20 percent of the general population.[20] A 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.[21] Military veterans deployed from 2001 to 2007 had a 41 percent higher suicide risk than the general population, according to the Department of Veterans Affairs.[22]

Florida Workers' Compensation System

Employers are required to pay compensation or furnish benefits that are required under ch. 440, F.S., if an employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of the employment.[23] Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,[24] or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.[25]

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.[26] An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury

[14] National Center for PTSD, How Common is PTSD in Adults? Available at How Common is PTSD in Adults? - PTSD: National Center for PTSD (va.gov) (last visited Jan. 29, 2022).
[15] Mo Med. 2021 Nov-Dec.; 118(6): 546–551.
[16] *Supra* at note 14.
[17] *Supra* at note 15.
[18] *Id.*
[19] *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.
[20] SAMHSA, First Responders" Behavioral Health Concerns, Emergency Response, and Trauma (May 2018) available at First Responders: Behavioral Health Concerns, Emergency Response, and Trauma (samhsa.gov) (last visited Jan. 29, 2022). The term, "first responders," includes emergency medical services, firefighters, and police officers.
[21] FireRescue1, Increasing suicide rates among first responders spark concern, available at Increasing suicide rates among first responders spark concern (firerescue1.com) (last visited Jan. 28, 2022).
[22] *Id.*
[23] Section 440.09(1), F.S.
[24] Section 440.38, F.S.
[25] Section 627.311(5)(a), F.S.
[26] "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.

as compared to all other causes combined, as demonstrated by medical evidence only.[27] An injury or disease caused by a toxic substance is not an injury by accident arising out of employment unless there is clear and convincing evidence establishing that exposure to the specific substance caused the injury or diseases sustained by the employee.[28] Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.[29]

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.[30] These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage,[31] up to the maximum weekly benefit established by law.[32] Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.[33]
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.[34]
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for five years.[35]

Section 440.15(3), F.S., provides that permanent impairment benefits are limited for a permanent psychiatric impairment to one percent permanent impairment.

General Compensability for Mental or Nervous Injuries

Section 440.093, F.S., sets forth the conditions under which a mental or nervous injury is compensable. A mental or nervous injury due to only stress, fright, or excitement is not an injury by accident arising out of the employment. Mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable.

[27] Section 440.09(1), F.S.
[28] Section 440.02(1), F.S.
[29] Section 440.13(2)(a), F.S.
[30] Section 440.12(1), F.S.
[31] An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.
[32] Section 440.15(1)-(4), F.S.
[33] Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specify that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and revived the standard of 260 weeks of payable temporary total disability benefits. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in Westphal to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).
[34] Section 440.15(3), F.S.
[35] Section 440.15(1), F.S.

Further, s. 440.093, F.S., provides that mental or nervous injuries occurring as a manifestation of an injury compensable under ch. 440, F.S., must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury. The law also limits the duration of temporary benefits for a compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement.

PTSD Compensability for First Responders

In 2018, the Legislature revised the standards for determining compensability of PTSD as an occupational disease under workers' compensation coverage for first responders.[36] As a result, first responders who meet certain conditions may access indemnity and medical benefits for PTSD without an accompanying physical injury. A "first responder" is a law enforcement officer, as defined in s. 943.10, F.S.,[37] a firefighter as defined in s. 633.102, F.S.,[38] or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,[39] employed by state or local government. Section 112.1815, F.S., authorizes the compensation of indemnity benefits for PTSD, if the first responder:

- Has PTSD that resulted from the course and scope of employment; and
- Is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier due to the first responder experiencing one of the following qualifying events relating to minors or others:
- Seeing for oneself a deceased minor;
- Witnessing directly the death of a minor;
- Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department,
- Participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;
- Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence;
- Witnessing directly an injury that results in death, if the person suffered grievous bodily harm that shocks the conscience; or

[36] Ch. 2018-124, Laws of Fla.

[37] "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

[38] "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services pursuant to s. 633.408, F.S.

[39] "Emergency medical technician" means a person who is certified by the Department of Health to perform basic life support pursuant to pt. III of ch. 401, F.S. "Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support pursuant to pt. III of ch. 401, F.S.

- Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

Further, the PTSD must be demonstrated by clear and convincing evidence. Medical and indemnity benefits for a first responder's PTSD are due regardless of whether the first responder incurred a physical injury, and the following provisions do not apply:

- Apportionment due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or
- Any limitation on temporary benefits under s. 440.093, F.S.

Current law requires an employing agency of a first responder to provide educational training relating to mental health awareness, prevention, mitigation, and treatment.

Recent PTSD Litigation in Florida

In a recent workers' compensation case, the employer/servicing agent appealed the Judge of Compensation Claims (JCC) order awarding the claimant payment of indemnity benefits under s. 112.1815(5), F.S. On appeal, the Court held that the JCC misinterpreted the statute to find that the claimant had filed the notice of claim timely because it was filed within 52 weeks of the date of the manifestation of the claimant's PTSD.[40] The time for filing a notice of injury or death for compensable PTSD suffered by a first responder is measured from date of the qualifying events or the manifestation of the disorder, whichever is later. Further, the notice must be properly noticed within 52 weeks after the qualifying event. The time requirement for a notice of claim under s. 112.1815(5)(d), F.S., operates as a statute of repose that bars actions by setting a time limit within which an action must be filed as measured from a specified act, after which time cause of action extinguished.[41]

III. Effect of Proposed Changes:

Section 1 amends s. 112.1815, F.S., relating to PTSD compensability for first responders, to extend the deadline for a first responder to file a notice of injury with their carrier or employer within 90 days of the date of the qualifying event or the *diagnosis*, rather than manifestation, of the disorder. Further, a claim is barred if the notice is not file within 52 weeks after the qualifying event *or the diagnosis of the disorder, which is later*. This change would essentially eliminate the statute of repose for filing a notice.

Section 2 provides the Legislature finds that the bill fulfills an important state interest**.**

Section 3 provides that the bill takes effect July 1, 2022.

[40] *Palm Beach Cty Fire Rescue v. Wilkes*. 309 So.3d 687 (Fla. 1d DCA 2020).
[41] *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature; . [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments…." The provisions of this bill appear to apply to all persons similarly situated (state agencies, state universities, state colleges, and local governments) employing law enforcement officers, correctional officers, and correctional probation officers.

The bill does include legislative findings declaring that the act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

There is not an express constitutional prohibition against the retroactive application of a noncriminal statute, if a law impairs the obligations of a contract or a vested right, the law is invalid. The Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.[42] However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, apply retroactively in certain situations.[43] In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.[44] A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[45] However, even where the

[42] U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.
[43] U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.
[44] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[45] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.[46] Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so "would attach new legal consequences to events completed before its enactment."[47]

Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.[48] The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.[49]

The bill revises the deadline for filing a notice of injury for a PTSD claim. Currently, the time for such claim expires 52 weeks after the qualifying event. The bill provides that the time for notice of injury is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. A claim under s. 112.1815, F.S., must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later. This would appear to be a substantive change.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will provide additional time for a first responder to file a notice of injury.

Private employers who employ first responders and secure workers' compensation coverage through a carrier may experience an increase in their respective premiums due to the increase in workers' compensation costs for first responders.

Implementation of the bill may increase litigation costs due to the elimination of the current notice of injury deadline and implementation of the new standard.

C. Government Sector Impact:

The amount of increase in the cost of workers' compensation coverage on local government is indeterminate. Some local governments self-insure and others secure coverage through carriers. It is unclear if fewer carriers will write this coverage because of the impact of the bill.

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[46] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).
[47] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).
[48] U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.
[49] *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); s*ee, e.g., Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).

Implementation of the bill may increase litigation costs due to the elimination of the current notice of injury deadline.

The bill will result in an increase in workers' compensation costs for the state Risk Management Trust Fund, which administers claims for state agencies and universities.[50]

National Council on Compensation Insurance Preliminary Cost Impact of SB 1066

The National Council on Compensation Insurance (NCCI) estimates that, if enacted, SB 1066 would place upward pressure on workers compensation (WC) system costs in Florida. The magnitude of such an increase is unknown but could be material on the occupational classes affected.[51] The first responder classifications represent approximately 2 percent of losses[52] in Florida. If enacted, any potential cost impact would be realized through future loss experience, and reflected in subsequent NCCI rate filings in Florida, as appropriate.

The NCCI notes that in a recent fiscal note related to another bill, SB 664, the Florida Division of Workers' Compensation (DWC) of the Department of Financial Services indicated that, since the enactment of the 2018 first responder legislation, there have been 50 WC claims brought by first responders with PTSD injuries and no accompanying physical injury. To date, the total amount of WC benefits paid for these claims is over $2.1 million, which translates to an average cost per claim of more than $42,000. The proposed lengthening of time proposed in CS/SB 1066 for notice of a claim may result in additional PTSD injuries receiving WC benefits that would not have otherwise met the notice requirements. While the number of such instances is unknown, data from the Florida DWC highlights that such claims can be material in cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.1815 of the Florida Statutes.

[50] Department of Financial Services, 2022 Legislative Analysis of SB 1066 (Dec. 12, 2021).
[51] NCCI, *Preliminary Cost Impact Analysis of SB 1066* (Jan. 31, 2022) (on file with Senate Banking and Insurance Committee). The NCCI is the statistical rating organization for workers' compensation carriers in Florida and other states.
[52] NCCI Workers Compensation Statistical Plan data for Florida policies becoming effective between 1/1/2011 and 12/31/2015. This figure of 2 percent may understate the total population share of Florida first responders, since the organizations employing them are often self-insured and therefore are not required to report data to NCCI.

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 Banking and Insurance on Feb. 2, 2022;
The CS provides that the Legislature declares that the bill fulfills an important state interest.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senators Burgess and Hooper

597-02658-22 20221066c1

A bill to be entitled

An act relating to workers' compensation benefits for first responders; amending s. 112.1815, F.S.; providing that the time for specified notice in certain cases of compensable posttraumatic stress disorder is measured from the time of the qualifying event or the diagnosis of the disorder, rather than the manifestation of the disorder, whichever is later; providing a declaration of important state interest; providing an effective date.

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

Section 1. Paragraph (d) of subsection (5) of section 112.1815, Florida Statutes, is amended to read:

112.1815 Firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.—

(5)

(d) The time for notice of injury or death in cases of compensable posttraumatic stress disorder under this subsection is the same as in s. 440.151(6) and is measured from one of the qualifying events listed in subparagraph (a)2. or the diagnosis ~~manifestation~~ of the disorder, whichever is later. A claim under this subsection must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.

Section 2. The Legislature determines and declares that this act fulfills an important state interest.

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

597-02658-22 20221066c1

Section 3. This act shall take effect July 1, 2022.

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

The Florida Senate

APPEARANCE RECORD

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Feb. 15, 2022
Meeting Date

Rules
Committee

SB 1066
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ray Colburn

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Tallahassee FL 32302
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

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

Florida Fire Chiefs Association

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

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S-001 (08/10/2021)

The Florida Senate

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Feb 15, 2022
Meeting Date

Rules
Committee

1066
Bill Number or Topic

Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
FL Police Chiefs Assoc.

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

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

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S-001 (08/10/2021)

2/15/22
Meeting Date

Rules
Committee

The Florida Senate

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SB 1066
Bill Number or Topic

Amendment Barcode (if applicable)

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Email Bernie@fpfp.org

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Florida Professional Firefighters

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

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1182
INTRODUCER:	Rules Committee; Banking and Insurance Committee; and Senator Broxson
SUBJECT:	Breach of Bond Costs
DATE:	February 15, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Fav/CS**
2.	Siples	Jones	CJ	**Favorable**
3.	Arnold	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1182 requires that a bail bond agent pay to return an incarcerated defendant to the county in which the defendant was released on bail, rather than any county within the same judicial circuit, in order to be released of liability on a criminal surety bail bond.

The bill also requires a bail bond agent to pay the costs and expenses of returning the defendant to the original court's jurisdiction, while the defendant is under the bail bond's fiduciary, rather than just the cost of transportation.

The bill specifies costs and expenses may not exceed the prorated salary of the officers or the contracted transportation company involved in transporting the defendant. The bill limits transportation expenses to mileage, vehicle expenses, meals, and, when necessary, overnight lodging for the officer or contracted transportation company and the defendant.

The bill may have a fiscal impact on both the private and government sectors. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Pretrial Release

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release with reasonable conditions. A judge is required to presume that nonmonetary conditions[1] are sufficient for any person to be granted pretrial release who is not charged with a dangerous crime.[2] Although a court has the authority to impose any number of pretrial release conditions, it must impose conditions of release that require the defendant to refrain from criminal activity and to refrain from contact with the victim.[3] If a defendant violates the pretrial release conditions, he or she may be arrested and held to answer before the court having jurisdiction to try the defendant.[4]

Bail Bonds

The purpose of a bail determination in criminal proceedings is to ensure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.[5]

Issuance of a Bail Bond

Bail is a common monetary condition of pretrial release that requires an arrestee to pay a set sum of money to the court to be released from jail.[6] As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent licensed under ch. 648, F.S. [7] Generally, to use the services of a bail bond agent, the defendant or someone on the defendant's behalf must pay a nonrefundable fee to the bail bond agent equal to 10 percent of the bond amount set by the court.[8] This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances.[9]

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[1] Nonmonetary conditions include any condition that does not require the payment of a financial guarantee, such as releasing the arrestee on his or her recognizance, placement in a pretrial release program, or placing restrictions on the arrestee's travel, association, or place of abode. *See* Fla. R. Crim. P. 3.131.

[2] Pursuant to s. 907.041(3), F.S., the term "dangerous crimes" includes: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking.

[3] Section 903.047, F.S.

[4] Section. 903.0471.

[5] Section 903.046(1), F.S.

[6] Section 903.011, F.S.

[7] Section 903.105, F.S.

[8] *Id. See also* Florida Dept. of Financial Services, *Bail Bonds Overview*, *available at* https://www.myfloridacfo.com/division/consumers/understandingcoverage/bailbondsoverview.htm (last visited February 1, 2022).

[9] Section 903.045, F.S.

Breach and Forfeiture of a Bail Bond

If a defendant fails to appear in court or violates any pretrial release conditions, he or she breaches the bond and a court generally must declare the bond and any money deposited to be forfeited.[10] However, this forfeiture requirement does not apply, even if there is a breach of the bond, when the information, indictment, or affidavit in the criminal case was not filed within six months of arrest, or the clerk of the court failed to provide the agent with at least 72 hours' notice of the time and date of the required appearance for the defendant.[11] Within five days after forfeiture of a bond, the court must mail or electronically transmit a notice to the bail bond agent and the surety company.[12] The value of the forfeited bond must be paid by the bail bond agent within 60 days of the date the notice was mailed or transmitted.[13]

Exoneration of Liability

A bail bond agent is exonerated of any further liability on a bail bond if, prior to a breach of the bond, the bail bond agent agrees in writing to pay the transportation cost of returning a defendant who is incarcerated in another county jail or prison to the jurisdiction of the court.[14] Surrendering a defendant prior to a breach of the bond eliminates the need for a bail bond agent to go through the bond forfeiture and discharge process, and absolves the bail bond agent of future liability on the bond.[15]

The term "transportation cost" is not defined in statute. However, the Second District Court of Appeal has interpreted the term to apply only to the costs incurred by the sheriff's office in actually transporting the defendant from the county of arrest to the county holding the arrest warrant.[16] This includes the prorated salary of the officers involved in transporting the defendant and the actual expenses of transportation.[17]

The "jurisdiction" to which the bail bond agent must return the defendant under s. 903.21(3), F.S., is any county within the judicial circuit of the court which issued the bond.[18] This means a bail bond agent is only required to pay the cost to return a defendant to the closest county from where the defendant is incarcerated which lies within the same judicial circuit as the court that

[10] Section 903.26(2)(a), F.S.
[11] Section 903.26(1), F.S. The 72 hours' notice period excludes Saturdays, Sundays, and holidays.
[12] Section 903.26(2)(a), F.S.
[13] *Id.*
[14] Section 903.21(3), F.S.
[15] Section 903.21(1) and (2), F.S.
[16] *Easy Bail Bonds v. Polk County*, 784 So. 2d 1173, 1177 (Fla. 2d DCA 2001).
[17] *Id.* In a footnote, the court states that it cannot envision all the expenses that a sheriff's office may incur, it notes that "these costs would include vehicle expenses, meals, and when necessary, overnight lodging for the transporting deputy and prisoner." The court further provides that the county may also claim as costs the prorated salary paid to any deputy who must cover the assignment of the deputy who had to leave the county to pick up the defendant. The court leaves unanswered whether the county can claim as costs the prorated salary of the law enforcement officer who appears at a hearing to justify the amount of the costs sought by the county.
[18] Section 903.21(3), F.S.

issued the bond.[19] Consequently, the county sheriff often bears the cost of transporting the defendant the remaining distance to the actual county which issued the bond.[20]

For example, to be exonerated from liability on the bond, if a defendant is released on bail in Franklin County (Apalachicola) and is subsequently arrested and detained in Duval County (Jacksonville), the bail bond agent is only required to pay transportation costs to return the defendant to Jefferson County (Monticello), the nearest county to Jacksonville that is in the same judicial circuit as Franklin County. The Franklin County Sheriff's Office is then responsible for the costs associated with transporting the defendant the remaining 103 miles from Jefferson County to Franklin County.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 903.21, F.S., related to method of surrendering a defendant and the exoneration of a bail bond agent of liability on a bond, by revising the definition of "jurisdiction" to mean the county from which the defendant was released on bail, rather than any county in the same judicial circuit.

The bill also requires a bail bond agent to pay the costs and expenses incurred in returning the defendant to the county in which he or she was released on bail, in order to be exonerated from liability on a bond. Costs and expenses may not exceed the prorated salary of the officers or the contracted transportation company involved and the actual expenses incurred in transporting the defendant. Transportation expenses are limited to mileage, vehicle expenses, meals, and, when

[19] Section 26.021, F.S., provides Florida's circuit courts are divided into 20 judicial circuits as follows:
- First Circuit - Escambia, Okaloosa, Santa Rosa, and Walton Counties.
- Second Circuit - Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla Counties.
- Third Circuit - Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.
- Fourth Circuit - Clay, Duval, and Nassau Counties.
- Fifth Circuit - Citrus, Hernando, Lake, Marion, and Sumter Counties.
- Sixth Circuit - Pasco and Pinellas Counties.
- Seventh Circuit - Flagler, Putnam, St. Johns, and Volusia Counties.
- Eighth Circuit - Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties.
- Ninth Circuit - Orange and Osceola Counties.
- Tenth Circuit - Hardee, Highlands, and Polk Counties.
- Eleventh Circuit - Miami-Dade County.
- Twelfth Circuit - DeSoto, Manatee, and Sarasota Counties.
- Thirteenth Circuit – Hillsborough County.
- Fourteenth Circuit - Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties.
- Fifteenth Circuit - Palm Beach County.
- Sixteenth Circuit – Monroe County.
- Seventeenth Circuit – Broward County.
- Eighteenth Circuit - Brevard and Seminole Counties.
- Nineteenth Circuit - Indian River, Martin, Okeechobee, and St. Lucie Counties.
- Twentieth Circuit - Charlotte, Collier, Glades, Hendry, and Lee Counties.

[20] Florida Office of the State Courts Administrator, *HB 381 Bill Analysis*, November 9, 2021 (on file with the Senate Committee on Banking and Insurance).

[21] Florida Department of Transportation, *FDOT Official Highway Mileage Viewer*, *available at* https://fdotewp1.dot.state.fl.us/citytocitymileage/viewer.aspx (last visited Feb. 2, 2022). Apalachicola was used as the starting location and Monticello was entered as the destination.

necessary, overnight lodging for the officer or contracted transportation company and the defendant. The bill provides that the bail bond agent is only responsible for the costs and expenses incurred for the transport of a defendant to whom he or she has a fiduciary duty.

Section 2 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:

Indeterminate. The bill may require a bail bond agent to transport a defendant a greater distance, thereby shifting the cost of transporting a defendant from the sheriff to the bail bond agent. Additionally, the bill may increase costs and expenses incurred by a bail bond agent related to meals, vehicle expenses, and overnight lodging for officers or contracted transportation companies involved in the transportation of a defendant.

C. Government Sector Impact:

Indeterminate. The bill may result in fewer hearings related to bond issues.[22] The bill may also reduce expenditures incurred by sheriffs for transporting a defendant from a county within a judicial circuit to the county from which a defendant was released on bail.

[22] Florida Office of the State Courts Administrator, *HB 381 Bill Analysis*, November 9, 2021 (on file with the Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 903.21 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 15, 2022:
The committee substitute makes technical and conforming changes.

CS by Banking and Insurance on January 25, 2022:
The committee substitute:

- Specifies the types of costs and expenses the bail bond agent agrees to pay in the course of transporting the defendant, to be:
  - Not more than the prorated salary of the officers or the contracted transportation company involved;
  - Mileage;
  - Vehicle expenses;
  - Meals;
  - Overnight lodging for the officer or contracted transportation company and the defendant, when necessary.
- Specifies the bail bond agent is responsible only for costs and expenses incurred during the transport of the defendant while the defendant is under the bail bond's fiduciary.

B. Amendments:

None.

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

128856

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
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The Committee on Rules (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 903.21, Florida Statutes, is amended to read:

903.21 Method of surrender; exoneration of obligors.—

(3)(a) The surety shall be exonerated of liability on the bond if it is determined before ~~prior to~~ breach of the bond that the defendant is in any jail or prison and the surety agrees in writing to pay the costs and expenses incurred in ~~transportation~~

128856

~~cost of~~ returning the defendant to the jurisdiction of the court. A surety is only responsible for the itemized costs and expenses incurred for the transport of a defendant to whom he or she has a fiduciary duty and is not liable for the costs and expenses incurred in transporting any other defendant.

(b) For purposes of this subsection, the term:

1. "Costs and expenses" means the prorated salary of any law enforcement officer or employee of a contracted transportation company as well as the actual expenses of transporting each defendant, which may only consist of mileage, vehicle expenses, meals, and, if necessary, overnight lodging for any law enforcement officer or employee of a contracted transportation company and the defendant.

2. "Jurisdiction" means the county from which the defendant was released on bail ~~within the judicial circuit as prescribed by law~~.

Section 2. 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 and insert:

A bill to be entitled

An act relating to breach of bond costs; amending s. 903.21, F.S.; requiring sureties to pay costs and expenses incurred in returning a defendant to the jurisdiction of the court; providing construction; specifying recoverable costs; revising and providing definitions; providing an effective date.

By the Committee on Banking and Insurance; and Senator Broxson

597-02319-22 20221182c1

A bill to be entitled

An act relating to breach of bond costs; amending s. 903.21, F.S.; redefining the term "jurisdiction"; providing for the exoneration from liability of a surety on a bond under certain circumstances if the surety agrees in writing to pay the costs and expenses incurred in returning the defendant to the jurisdiction of the court; providing for calculation of costs and expenses; providing construction; providing an effective date.

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

Section 1. Subsection (3) of section 903.21, Florida Statutes, is amended to read:

903.21 Method of surrender; exoneration of obligors.—

(3)(a) As used in this subsection, the term "jurisdiction" means the county from which the defendant was released on bail.

(b) The surety shall be exonerated of liability on the bond if it is determined before ~~prior to~~ breach of the bond that the defendant is in any jail or prison and the surety agrees in writing to pay the costs and expenses incurred in ~~transportation cost of~~ returning the defendant to the jurisdiction of the court. Such costs and expenses incurred may not be more than the prorated salary of the officers or the contracted transportation company involved and the actual expenses of transporting each defendant. Such actual expenses of transportation shall only consist of mileage, vehicle expenses, meals, and, when necessary, overnight lodging for the officer or contracted

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

597-02319-22 20221182c1

transportation company and the defendant.

(c) A surety agent is responsible only for the costs and expenses incurred during transport of defendants who are under his or her fiduciary ~~For purposes of this subsection, "jurisdiction" means within the judicial circuit as prescribed by law~~.

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

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 8, 2022

I respectfully request that **Senate Bill # 1182**, relating to Breach of Bond Costs, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Doug Broxson
Florida Senate, District 1

File signed original with committee office

S-020 (03/2004)

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 1190
INTRODUCER:	Rules Committee and Senator Boyd
SUBJECT:	Two-way Radio Communication Enhancement Systems
DATE:	February 16, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.	Schrader	Knudson	BI	**Favorable**
3.	Hackett	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1190 provides that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal strength requirements, but may not be required by local fire authorities in apartment buildings that are 75 feet or less in height with wood frame exteriors.

Local fire authorities set minimum standards for radio signal strength throughout buildings within their jurisdictions in order to ensure consistent fire and rescue communication capabilities.

The bill takes effect July 1, 2022.

II. Present Situation:

Florida Fire Prevention Code

The State Fire Marshal, by rule, adopts the Florida Fire Prevention Code (Florida Fire Code), which contains all firesafety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such firesafety laws and rules.[1] The State Fire Marshal adopts a

[1] Fla. Admin. Code R. 69A-60.002.

new edition of the Florida Fire Code every three years.[2] The Florida Fire Code is largely based on the *National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code,* along with the current edition of the *Life Safety Code, NFPA 101*.[3] The 7th, and current, edition took effect on December 31, 2020.[4] State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the Florida Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[5] The Florida Fire Code applies to every building and structure throughout the state with few exceptions.[6] Municipalities, counties, and special districts with firesafety responsibilities may supplement the Florida Fire Code with more stringent standards adopted in accordance with s. 633.208, F.S.[7]

Radio Signal Strength for Fire Department Communications

The life safety of firefighters and citizens depends on reliable, functional communication tools that work in the harshest and most hostile of environments. All firefighters, professional and volunteer, operate in extreme environments that are markedly different from those of any other radio users. The radio is the lifeline that connects the firefighters to command and outside assistance when in the most desperate of situations.[8]

Modern focus on radio signal strength stems from difficulties experienced by firefighters attempting rescue operations on September 11, 2001, in the World Trade Towers, who found that in certain areas of the building their radio signal degraded, making live communication difficult or impossible.[9]

Two-way radio communication enhancement systems are devices installed after a building is constructed that accept and then amplify radio signals used by first responders. A radio frequency site survey may be conducted in a building to determine areas where radio signal strength drops due to materials used in construction, such as thick walls, metal construction, underground structures, and low-emissivity glass windows. The generally desired effect is that radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio

[2] Section 633.202(1), F.S.
[3] Section 633.202(2), F.S.
[4] Division of State Fire Marshal, *Florida Fire Prevention Code*, *available at* https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm (last visited Jan. 30, 2022).
[5] Sections 633.108 and 633.208, F.S.
[6] Section 633.208, F.S., and Fla. Admin. Code R. 69A-60.002(1).
[7] Section 633.208(3), F.S., and Fla. Admin. Code R 69A-60.002(2).
[8] Federal Emergency Management Agency, United States Fire Administration. Voice Radio Communications Guide for the Fire Service (June 2016), p. 1, *available at* https://www.usfa.fema.gov/downloads/pdf/publications/Voice_Radio_Communications_Guide_for_the_Fire_Service.pdf (last visited Jan. 30, 2022).
[9] See *Assessment of Total Evacuation Systems for Tall Buildings: Literature Review,* National Fire Protection Association's (NFPA), *available at* https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Executive-summaries/evacsystemstallbuildingsliteraturereviewexecsum.ashx#:~:text=According%20to%20the%20definition%20of,floor%20of%20the%20highest%20occupiable (last visited Jan. 30, 2022) and Fire Engineering, *World Trade Center Disaster: Initial Response*, https://www.fireengineering.com/firefighting/world-trade-center-disaster-initial-response/#gref (Sep 1, 2002) (last visited Jan 30, 2022).

signal strength. These include bi-directional amplifiers and networks of indoor antennae, referred to collectively as a distributed antenna system.[10]

Florida Fire Code Minimum Radio Signal Strength

The Florida Fire Code provides that all new and existing buildings must maintain minimum radio signal strength at a level determined by the authority having jurisdiction (local fire authorities).[11] Where required by a local fire authority, two-way radio communication enhancement systems must comply with federal standards for installation, maintenance, and use of emergency services communications systems.[12] Additionally, if a two-way radio communication enhancement system would have a negative impact on the operations of a facility, the local fire authority may accept an automatically activated emergency responder radio coverage system in the alternative.[13]

Minimum Radio Signal Strength for High-rise Buildings

Section 633.202(18), F.S., enacted in 2016[14] and recently amended in 2021,[15] provides that local fire authorities must determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. A high-rise building is a building greater than 75 feet in height where the building height is measured from the lowest level of fire department vehicle access to the floor of the highest story that can be occupied.[16] Existing high-rise buildings are not required to comply with minimum radio strength requirements until January 1, 2025. However, by January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2025. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by January 1, 2024.

A 2018 declaratory statement from the Department of Financial Services clarified that the compliance timeframes provided in s. 633.202(18), F.S., apply only to high-rise buildings and do not apply to buildings less than 75 feet in height.[17] Thus, compliance with minimum radio signal

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[10] See *High-Rise Public Safety System Integrators,* Treasure Island Fire Department, *available at* https://www.mytreasureisland.org/residents/departments/fire_dept/local_high-rise_public_safety_system_integrators.php (last visited Jan. 30, 2022); *Information Bulletin: Two-Way Radio Communication Enhancement System Requirements,* East Lake Tarpon Special Fire Control District, *available at* https://www.elfr.org/files/e2eae3cb2/Bulletin+East+Lake+Two+Way+Communications.pdf (last visited Jan. 30, 2022).

[11] Florida Fire Prevention Code (7th ed.) s. 11.10.1. The "authority having jurisdiction" is typically the designated head fire and rescue officer of the county, municipality, or special district with fire safety responsibilities over an area.

[12] Florida Fire Prevention Code (7th ed.) s. 11.10.2.

[13] Florida Fire Prevention Code (7th ed.) s. 11.10.3.

[14] Ch. 2016-129, s. 27, L.O.F. At the time of its enactment, the subsection was s. 633.202(17), F.S.

[15] Ch. 2021-113, s. 25, L.O.F.

[16] NFPA 101, Life Safety Code, 2021 edition - Ch. 3.3.37.7.

[17] Department of Financial Services Declaratory Statement, *In the Matter of Charles B. Parks, Chief Florida Fire Code Official of Broward County,* (April 18, 2018), *available at* https://www.doah.state.fl.us/FLAID/DFS/2018/DFS_217787-17-DS_12042019_013047.pdf (last visited Jan. 30, 2022).

strength requirements for non-high-rise buildings is controlled by s. 11.10 of the Florida Fire Code, which provides no grace periods or acceptable timeframes for compliance.

III. Effect of Proposed Changes:

Section 1 amends s. 633.202(18), F.S., to provide that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal strength requirements, but may not be required by local fire authorities for apartment buildings that are 75 feet or less in height with the exterior components constructed of wood frame.

Evidence of wood frame construction is to be shown by the property owner using building permit documentation showing wood frame construction.

Section 2 provides that 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Apartment building owners may see positive impact from being able to utilize less costly improvement options to meet radio strength standards in certain buildings.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 633.202 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 Rules on February 15, 2022:
The CS narrows the exemption for where a fire authority may not require a 2-way radio system to wood frame apartment buildings 75 feet or less, rather than all apartment buildings 75 feet or less.

B. Amendments:

None.

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

148564

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
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The Committee on Rules (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete line 23
and insert:
buildings 75 feet or less in height with the exterior components constructed of wood frame. Evidence of wood frame construction shall be shown by the property owner providing building permit documentation which identifies the construction type as wood frame. Existing buildings

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

148564

And the title is amended as follows:

Delete line 9

and insert:

apartment buildings; requiring that owners of such apartment buildings provide certain documentation; providing an effective date.

By Senator Boyd

21-01019-22 20221190__

A bill to be entitled

An act relating to two-way radio communication enhancement systems; amending s. 633.202, F.S.; authorizing the use of two-way radio communication enhancement systems to comply with certain radio signal strength requirements in the Florida Fire Prevention Code; specifying that such systems or equivalent systems are not required in certain apartment buildings; providing an effective date.

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

Section 1. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Two-way radio communication enhancement systems or equivalent systems may be used to comply with the minimum radio signal strength requirements. However, two-way radio communication enhancement systems or equivalent systems are not required in apartment buildings that are 75 feet or less in height. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio communication enhancement systems ~~system enhancement communications~~ as required by the Florida Fire Prevention Code until January 1, 2025. However, by January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio

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

21-01019-22 20221190__

strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2025. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by January 1, 2024.

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

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

The Florida Senate

APPEARANCE RECORD

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

2/15/22
Meeting Date

Rules
Committee

S.B. 1190
Bill Number or Topic

148564
Amendment Barcode (if applicable)

Name Richard Pinsky Phone

Address 201 B Park Ave Email
Street

Tallahassee
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:

Emergency Communication Industry of Florida

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/22
Meeting Date

Rules
Committee

1190
Bill Number or Topic

Amendment Barcode (if applicable)

Name Richard Pinsky

Phone

Address 201 E Park Ave
Street

Email

Tallahassee
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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Emergency Communications Industry of Florida

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/22
Meeting Date

RULES
Committee

1190
Bill Number or Topic

Amendment Barcode (if applicable)

Name JOE PASQUALONE

Phone 772 932 1555

Address PO BOX 325 (FL FIRE MARSHALS & INSPECTORS ASSOC.)
Street

Email joe.pasqualone@ffmia.org

HOBE SOUND FL 33475
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-15-22
Meeting Date

Rules
Committee

1190
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jim Millican Florida Fire Chiefs Assoc. Phone 727-526-5630

Address 4360-55 AV N Email JMillican@leaglaw.com
Street

Spark FL 33714
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-15-22
Meeting Date

RULES
Committee

SB 1190
Bill Number or Topic

Amendment Barcode (if applicable)

Name ALAN PERDUE

Phone 336-451-6707

Address 1484 BURNETTS CHAPEL RD.
Street

Email alan.perdue@saferbuildings.org

GREENSBORO NC 27407
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:

SAFER BUILDINGS COALITION

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1204
INTRODUCER:	Senator Broxson
SUBJECT:	Public Records/Information or Records/Executions
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	**Favorable**
2.	Ravelo	Cibula	JU	**Favorable**
3.	Siples	Phelps	RC	**Favorable**

I. Summary:

SB 1204 creates a public records exemption for certain persons or entities involved in executions. Specifically, the bill makes confidential and exempt information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including those who administer, compound, dispense, distribute, maintain, manufacture, order, prepare, prescribe, provide, purchase, or supply drugs, chemicals, supplies, or equipment needed to conduct an execution.

The bill makes the exemption applicable to information and records held by the Department of Corrections (DOC) before, on, or after the effective date of the bill.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

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

[1] FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, 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 adopted in the rules of each house of the Legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

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

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

> 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 connections 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."[6]

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

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[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

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

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

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

Open Government Sunset Review Act

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

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.[20] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the

[9] FLA. CONST. art. I, s. 24(c).
[10] *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[11] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[12] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[14] *Id.*
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[16] Section 119.15, F.S.
[17] 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.
[18] 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.
[19] Section 119.15(3), F.S.
[20] 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;[21]
- 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;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] 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.[25] 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.[26]

Death Penalty

Florida is one of 27 states in which the death penalty is authorized.[27] Chapter 922, F.S., charges the DOC with the responsibility of carrying out the executions of those sentenced to death. As of January 18, 2022, there are 321 prisoners on Florida's death row.[28]

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[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] 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?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] Death Penalty Information Center, *Facts about the Death Penalty*, (updated Jan. 3, 2022), *available at* https://documents.deathpenaltyinfo.org/pdf/FactSheet.pdf (last visited Jan. 18, 2022). The other states that authorize the death penalty are Alabama, Arizona, Arkansas, California, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming. The U.S. Department of Justice and U.S. military are also authorized to impose the death penalty.
[28] Department of Corrections, *Death Row Roster*, *available at* http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx (last visited Jan. 18, 2022).

Section 922.105(1), F.S., requires that all death sentences be executed by lethal injunction, unless the person sentenced to death affirmatively requests to be executed by electrocution. However, if electrocution or lethal injunction is held to be unconstitutional by the Florida Supreme Court or a U.S. Court of Appeals that has jurisdiction over Florida, any person sentenced to death must be executed by any constitutional method of execution.[29]

Confidentiality of Information

Current law makes information that identifies an executioner, or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection confidential and exempt from public disclosure.[30] However, it does not exclude information regarding the other components of the supply chain for obtaining the necessary drugs, chemicals, supplies, or equipment to conduct an execution, such as the manufacturer, distributer, or supplier. Historically, once the DOC's source of drugs used for carrying out executions is publicly known, it is no longer able to procure drugs from that source.[31] In such cases, the DOC may not be able to obtain the necessary supplies to carry out an execution as required under state law.

III. Effect of Proposed Changes:

The bill creates a public records exemption for certain persons or entities involved in executions. Specifically, the bill makes confidential and exempt information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including those who administer, compound, dispense, distribute, maintain, manufacture, order, prepare, prescribe, provide, purchase, or supply drugs, chemicals, supplies, or equipment needed to conduct an execution.

The bill makes the exemption applicable to any such information held by the DOC before, on, or after the effective date of the bill.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 27, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a public necessity statement as required by Article I, section 24(c) of the State Constitution. The public necessity statement provides that:

> The Legislature finds that it is a public necessity that information or records that identify or could reasonably lead to the identification of those persons or entities that participate in an execution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information or records that identify or that could reasonably lead to the identification of those persons or entities that participate in an execution could jeopardize the safety of such persons or

[29] Section 922.105(3), F.S.
[30] Section 945.10(1)(g), F.S.
[31] Department of Corrections, *Senate Bill 1204 Agency Analysis* (Dec. 14, 2021) (on file with the Senate Committee on Criminal Justice).

entities by exposing them to potential harassment, intimidation, or harm and could also thwart the ability of the Department of Corrections to obtain the necessary personnel, drugs, chemicals, supplies, or equipment needed to carry out executions. Therefore, the Legislature finds that it is a public necessity that this information be kept confidential and exempt from public disclosure.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution; thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the identification of the persons and entities that participate in an execution. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill creates a new public records exemption that is partially duplicative of the existing public record exemption in s. 945.10(g), F.S., which provides that information that identifies an executioner or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection is exempt from public disclosure.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.10 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.

By Senator Broxson

1-00595A-22 20221204__

A bill to be entitled

An act relating to public records; amending s. 945.10, F.S.; providing an exemption from public records requirements for information or records that identify or could reasonably lead to the identification of any person or entity that participates in an execution; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (j) is added to subsection (1) of section 945.10, Florida Statutes, to read:

945.10 Confidential information.—

(1) Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(j)1. Information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including persons or entities administering, compounding, dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with chapter 922.

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

1-00595A-22 20221204__

2. The exemption in subparagraph 1. applies to information and records held by the department before, on, or after the effective date of the exemption.

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

Section 2. The Legislature finds that it is a public necessity that information or records that identify or could reasonably lead to the identification of those persons or entities that participate in an execution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information or records that identify or that could reasonably lead to the identification of those persons or entities that participate in an execution could jeopardize the safety of such persons or entities by exposing them to potential harassment, intimidation, or harm and could also thwart the ability of the Department of Corrections to obtain the necessary personnel, drugs, chemicals, supplies, or equipment needed to carry out executions. Therefore, the Legislature finds that it is a public necessity that this information be kept confidential and exempt from public disclosure.

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

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 8, 2022

I respectfully request that **Senate Bill # 1204**, relating to Public Records/Information or Records/Executions, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Doug Broxson
Florida Senate, District 1

File signed original with committee office

The Florida Senate

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2/15/22
Meeting Date

Rules
Committee

1204
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christie Arnold

Phone 850-339-0075

Address 201 West Park Avenue
Street

Email carnold@flacch.org

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Conference of Catholic Bishops

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

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

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The Florida Senate

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15 FEBRUARY 22
Meeting Date

RULES
Committee

1204
Bill Number or Topic

Amendment Barcode (if applicable)

Name MICHAEL MCQUONE

Phone 850-284-9130

Address 1520 OLDFIELD DRIVE
Street

Email

TALLAHASSEE FL 32308
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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2-15-21
Meeting Date

Rules
Committee

1204
Bill Number or Topic

Amendment Barcode (if applicable)

Name Virginia Hamrick

Phone 850-222-3518

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Street

Email vhamrick@floridafaf.org

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
First Amendment Foundation

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

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1222
INTRODUCER:	Judiciary Committee; Health Policy Committee; and Senator Bean, and others
SUBJECT:	Acute and Post-acute Hospital Care at Home
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Vanwinkle	Brown	HP	**Fav/CS**
2.	Ravelo	Cibula	JU	**Fav/CS**
3.	Rossitto-Vanwinkle	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1222 authorizes paramedics and Class III institutional pharmacies, a type of hospital pharmacy, to serve hospital patients at their homes. Under the bill, a paramedic, under the supervision of a physician or acting under other standing orders, may provide basic life support services and advanced life support services to a patient receiving acute and post-acute hospital care at his or her permanent residence through a program approved by the Centers for Medicare and Medicaid Services and the Agency for Health Care Administration. A Class III institutional pharmacy may dispense, distribute, compound, and fill prescriptions for medicinal drugs for these same patients.

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

II. Present Situation:

Florida's Department of Health (DOH)

The Legislature created the Department of Health (DOH) to protect and promote the health, safety and welfare of all residents and visitors in the state.[1] The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the

[1] Sections 20.43 and 456.003, F.S.

public. The Division of Medical Quality Assurance (MQA) is responsible for the boards[2] and professions within the DOH.[3]

Boards of Medicine and Osteopathic Medicine

The Board of Medicine regulates allopathic physicians (MD). An MD is a person who is licensed to practice medicine in Florida. Practicing medicine includes the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.[4] Allopathic standards of practice and standards of care for a particular practice setting include, but are not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.[5]

The Board of Osteopathic Medicine regulates osteopathic physicians (DO). A DO is a person who is licensed to practice osteopathic medicine Florida. The practice of osteopathic medicine includes the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements that emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.[6]

Emergency Medical Services (EMS)

The Legislature created ch. 401, F.S., in 1973 with the intent to establish a statewide organized and regulated system of regional EMS providers with two major objectives:

- To develop a statewide system of emergency medical telecommunications to maximize the use of existing radio channels to provide faster and more effective EMS to the general population;[7] and
- To protect and enhance the public health, safety, and welfare with the establishment a statewide EMS plan to:
  - Monitor the quality of patient care delivered by each licensed service;
  - Certify EMS personnel;
  - Create an EMS advisory council;
  - Develop a comprehensive statewide injury-prevention program; and
  - Development minimum standards for EMS providers, personnel, vehicles, services, medical direction, and inspections.[8]

The Legislature further recognized that a major impediment to meeting its two legislative objectives for s. 401, F.S., was the inability of governmental and private agencies to respond

[2] Under s. 456.001(1), F.S., "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.
[3] Section 20.43, F.S.
[4] Section 458.305, F.S.
[5] Section 458.331(1)(v), F.S.
[6] Section 459.003, F.S.
[7] Section 401.013, F.S.
[8] Section 401.211, F.S.

cooperatively in order to finance a system of regional EMS. In response, the Legislature found it in the public interest to foster the development of a statewide EMS provider system and created the Florida Emergency Medical Services Grant Act.[9] This law authorizes the DOH to make grants to local agencies, EMS organizations, and youth athletic organizations to provide EMS, including emergency medical dispatch, and work with local EMS organizations to expand the use of automated external defibrillator (AED) devices.[10]

Emergency Medical Service Providers

Before a person or entity, including a government entity, provides prehospital or interfacility advanced life support (ALS) services or basic life support (BLS) transportation services to the public, the person or entity must be licensed as a BLS service or an ALS service. Every ALS ambulance transporting a person who is sick, injured, wounded, incapacitated, or helpless must have a least two persons on-board: one who is a certified paramedic or licensed physician and one who is a certified emergency medical technician (EMT), certified paramedic, or licensed physician and also meets the requirements of an ambulance driver. The person having the highest medical certification must be in charge of patient care.[11]

Paramedic

A certified paramedic may perform both BLS and ALS.[12] ALS includes the assessment or treatment by a certified paramedic qualified in the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards, pursuant to DOH administrative rules.[13]

Qualifications for Certification

To be qualified for certification as a paramedic, an individual must either successfully complete an initial Florida paramedic training program that was conducted in accordance with the January 2009 U.S. DOT National EMS Education Standards; or if the individual is from out of state or military trained in accordance with the 1998 U.S. DOT EMT-Paramedic (EMT-P) NSC or the January 2009 U.S. DOT National EMS Education Standards, if he or she currently holds a valid paramedic certification from the National Registry of Emergency Medical Technicians (NR-EMT).

Each applicant must submit an application to the DOH. If the applicant competed his or her initial paramedic training program in Florida, then he or she must pass the DOH-required paramedic certification examination within two years after completing the initial Florida training program. The DOH will accept a passing score for this exam if taken within the 2-year period, whether the exam is taken before or after the application is filed.

[9] *See* ss. 401.101 and 401.104, F.S.
[10] Section 401.111, F.S.
[11] Section 401.25(1), F.S.
[12] Section 401.23(17), F.S.
[13] Section 401.23(1), F.S.

To maintain an active certificate, a paramedic must pay the recertification fee and complete 30 hours of paramedic refresher training based on criteria in the January 2009 U.S. DOT National EMS Education Standards which includes adult and pediatric education with a minimum of two hours in pediatric emergencies, and maintain a current Advanced Cardiac Life Support (ACLS) card. [14] The DOH accepts either the affirmation of a licensed EMS provider's medical director, a certificate of completion of refresher training from a DOH-approved Florida training program, or a DOH-approved CE provider's proof of compliance with the CE requirements.

EMS Services in Community Health Care

Section 401.272, F.S, was enacted by the Legislature to encourage more effective use of the skills of EMTs and paramedics by enabling them to perform, in partnership with local county health departments, specific additional health care tasks that are consistent with the public health and welfare. Notwithstanding any other provision of law to the contrary, a paramedic or an EMT may perform "health promotion and wellness"[15] activities and blood pressure screenings in a nonemergency environment, within the scope of his or her training, and under the direction of a medical director.

A paramedic may administer immunizations in a nonemergency environment, within the scope of his or her training, and under the direction of a medical director. There must be a written agreement between the paramedic's medical director and the county health department located in each county in which the paramedic administers immunizations. This agreement must establish the protocols, policies, and procedures under which the paramedic must operate. Each medical director under whose direction a paramedic administers immunizations must verify and document that the paramedic has received sufficient training and experience to administer immunizations. The verification must be documented on forms developed by the DOH, and the forms must be maintained at the service location of the licensee and made available to the DOH upon request.

The Board of Pharmacy

The Board of Pharmacy (BOP) is created within the DOH and is authorized to make rules to regulate the practice of professional pharmacy in pharmacies meeting minimum requirements for safe practice.[16] All pharmacies must obtain a permit before operating, unless exempt by law. This is true whether opening a new establishment or simply changing locations or owners.[17]

The Practice of Pharmacy

Florida law recognizes seven types of pharmacies as eligible for various operating permits to be issued by the DOH:

[14] *See* s 401.27(4)(e)2., F.S., and Fla. Admin. Code R. 64J-1.022, (2021).
[15] "Health promotion and wellness" means the provision of public health programs pertaining to the prevention of illness and injury. Section 401.272(2)(a), F.S.
[16] *See ss.* 465.002, and 465.0155, F.S.
[17] Fla. Admin. Code R. 64B16-28.100(1) (2021).

- Community pharmacy;[18]
- Institutional pharmacy;[19]
- Nuclear pharmacy;[20]
- Special pharmacy;[21]
- Internet pharmacy;[22]
- Non-resident sterile compounding pharmacy;[23] and
- Special sterile compounding pharmacy.[24]

Institutional Pharmacies

An "institutional pharmacy" includes any pharmacy located in a health care institution, which includes a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold.[25] Institutional pharmacy permits are required for any pharmacy located in any health care institution.[26]

Currently there are four types of institutional pharmacy permits issued by the BOP to institutional pharmacies: Institutional Class I, Class II, Modified Class II, and Class III.[27]

Institutional Class I Pharmacy

A Class I institutional pharmacy is an institutional pharmacy in which all medicinal drugs are administered from individual prescription containers to an individual patient and in which medicinal drugs are not dispensed on the premises, except that licensed nursing homes[28] may purchase medical oxygen for administration to residents.[29]

Institutional Class II Pharmacy

A Class II institutional pharmacy is a pharmacy that employs the services of a registered pharmacist who, in practicing institutional pharmacy, provide dispensing and consulting services

[18] The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. *See* ss. 465.003(11)(a)1. and 465.018, F.S.
[19] *See* ss. 465.003(11)(a)2., and 465.019, F.S.
[20] The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, but does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals. *See* ss. 465.003(11)(a)3. and 465.0193, F.S.
[21] The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined by law. *See* ss. 465.003(11)(a)4. and 465.0196, F.S.
[22] The term "internet pharmacy" includes locations not otherwise licensed or issued a permit under ch. 465, F.S., whether or not in Florida, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. *See* ss. 465.003(11)(a)5. and 465.0197, F.S.
[23] The term "nonresident sterile compounding pharmacy" includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, and a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit. *See* s. 465.0158(1), F.S.
[24] *See* Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2021). An outsourcing facility is considered a pharmacy and must hold a special sterile compounding permit if it engages in sterile compounding.
[25] Section 465.003(11)(a)2., F.S.
[26] Fla. Admin. Code R. 64B16-28.100(3) (2021).
[27] Section 465.019, F.S.
[28] *See* part II, ch. 400, F.S., relating to nursing homes.
[29] Section 465.019(2)(a), F.S.

on the premises to patients of the institution, for use on the premises of the institution.[30] A Class II institutional pharmacy is required to be open sufficient hours to meet the needs of the hospital facility.[31] The consultant pharmacist of record is responsible for establishing a written policy and procedure manual.[32]

Modified Institutional Class II Pharmacy Permits

Modified Institutional Class II pharmacies are institutional pharmacies in short-term, primary care treatment centers which meet all the requirements for a Class II permit, except space and equipment requirements.[33] Modified Class II Institutional pharmacies are designated as Type A, Type B, and Type C according to the specialized type of the medicinal drug delivery system utilized at the facility, either a patient-specific or bulk drug system, and the quantity of the medicinal drug formulary at the facility.[34]

Institutional Class III Pharmacies

Class III institutional pharmacies are pharmacies, including central distribution facilities, that are affiliated with a hospital that provide the same services authorized by a Class II institutional pharmacy permit. Class III institutional pharmacies may:

- Dispense, distribute, compound, and fill prescriptions for medicinal drugs;
- Prepare prepackaged drug products;
- Conduct other pharmaceutical services for the affiliated hospital and for entities under common control that are each permitted under ch. 465, F.S., to possess medicinal drugs; and
- Provide the services in Class I institutional pharmacies, Class II institutional pharmacies, and Modified Class II institutional pharmacies that hold an active health care clinic establishment permit.[35, 36]

Institutional Pharmacies – Dispensing Medicinal Drugs

Class II and Class III institutional pharmacies are permitted to dispense medicinal drugs to outpatients only when that institution has been issued a community pharmacy permit from the

[30] *See* s. 465.019(2)(b), F.S. Exceptions apply when there is a state of emergency and for single doses of a drug ordered by physicians in limited circumstances.
[31] Fla. Admin. Code R. 64B16-28.603 (2021).
[32] Section 465.019(5), F.S.
[33] Section 465.019(2)(c), F.S.
[34] Fla. Admin. Code R. 64B16-28.702(2) (2021). Modified Class II Institutional Pharmacies provide the following pharmacy services: (1) Type "A" Modified Class II Institutional Pharmacies provide pharmacy services in a facility which has a formulary of not more than 15 medicinal drugs, excluding those medicinal drugs contained in an emergency box, and in which the medicinal drugs are stored in bulk and in which the consultant pharmacist provides on-site consultations not less than once every month, unless otherwise directed by the BOP after review of the policy and procedure manual; (2) Type "B" Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and in bulk form and which has an expanded drug formulary, and in which the consultant pharmacist provides on-site consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual; and (3) Type "C" Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and which has an expanded drug formulary, and in which the consultant pharmacist provides onsite consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual.
[35] Section 465.019(2)(d)1., F.S.
[36] *See* s. 499.01(2)(r), F.S.

DOH.[37] However, medicinal drugs may be dispensed by a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber treating the patient in the hospital determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such prescribing and dispensing must be for a supply of the drug that will last for the greater of the following:

- Up to 48 hours; or
- Through the end of the next business day.[38]

Notwithstanding those limits, if a state of emergency has been declared and is in effect for a specific area of the state, a supply of a medicinal drug which will last up to 72 hours may be prescribed and dispensed to persons in that area. A prescriber prescribing medicinal drugs in a state of emergency may also provide the patient with a prescription for the drug for use beyond the initial prescription period if the prescriber determines that such use is warranted. Any prescribing or dispensing of a controlled substance during a state of emergency must comply with the applicable requirements of ss. 456.44 and 465.0276, F.S.

III. Effect of Proposed Changes:

CS/CS/SB 1222 amends s. 401.272, F.S., to authorize a paramedic to provide basic and advanced life support to a patient receiving acute and post-acute hospital care at his or her permanent residence through a program approved by the Centers for Medicare and Medicaid Services and the Agency for Health Care Administration.

Moreover, the physician who supervises or provides medical direction to a paramedic who administers the basic life support services or advanced life support services is liable for any act or omission of the paramedic.

The Department of Health is authorized to adopt and enforce rules relating to the expanded scope of services that may be provided by a paramedic under the bill.

The bill amends s. 465.019, F.S., to expand the scope of Class III institutional pharmacies to authorize them to dispense, distribute, compound, and fill prescriptions for medicinal drugs to a patient receiving acute and post-acute hospital care at his or her permanent residence through a program approved by the Centers for Medicare and Medicaid Services and the Agency for Health Care Administration.

The bill makes technical and conforming changes to ss. 401.23, 14.33, 252.515, 395.1027, and 401.245 F.S.

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

[37] *See* s. 465.019(2)(a), F.S., which prohibits a Class I institutional pharmacy from dispensing medicinal drugs.
[38] Section 465.019(4), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By allowing private hospitals to serve patients at their homes through the use of paramedics and hospital pharmacies, CS/CS/SB 1222 may allow health care services to be provided in a more cost effective manner. Moreover, the ability to treat a hospital patient at his or her home may make additional hospital beds available for patients having more serious conditions.

C. Government Sector Impact:

By allowing government hospitals or private hospitals receiving government funding to serve patients at their homes through the use of paramedics and hospital pharmacies, the bill may allow health care services to be provided in a more cost effective manner. Moreover, the ability to treat a hospital patient at his or her home may make additional hospital beds available for patients having more serious conditions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 401.23, 401.272, 465.019, 14.33, 252.515, 395.1027, and 401.245.

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 Judiciary on February 7, 2022:
The committee substitute limits the expansion of the additional authority granted to paramedics and Class III institutional pharmacies in the underlying committee substitute. The underlying committee substitute would have allowed paramedics and Class III institutional pharmacies to serve patients in a "nonemergent community setting." Under the committee substitute, the services may be provided only at a patient's residence through a program approved by both CMS and AHCA. Additionally, the committee substitute no longer authorizes a Class II or Class III institutional pharmacy to provide medicines to a patient where community pharmacy services are not readily accessible.

CS by Health Policy on January 19, 2022:
The CS:

- Authorizes paramedics to perform BLS services, ALS services, and additional health care services to acute care at-home patients in a nonemergent community setting under the supervision of a physician in partnership with specific hospitals;
- Requires a physician supervising a paramedic who provides BLS, ALS, or additional health care services to acute care at home patients under the bill, to be liable for any act or omission of the paramedic when performing the acts or services;
- Authorizes Class III institutional pharmacies to dispense, distribute, compound, and fill prescriptions for medicinal drugs to acute care at home patients and inpatients; and
- Authorizes Class II and III institutional pharmacies that do not have community pharmacy permits to dispense to an acute care at-home patient in a nonemergent community setting if a prescriber treating the patient in the hospital determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise.

B. Amendments:

None.

By the Committees on Judiciary; and Health Policy; and Senators Bean and Gibson

590-02781-22 20221222c2

A bill to be entitled

An act relating to acute and post-acute hospital care at home; amending s. 401.23, F.S.; defining the term "acute and post-acute hospital care at home"; amending s. 401.272, F.S.; authorizing paramedics to perform certain life support services to patients receiving acute and post-acute hospital care at home under certain circumstances; providing that a physician or medical director who supervises or directs the provision of such services by a paramedic is liable for any act or omission during the provision of such services; authorizing the Department of Health to adopt and enforce rules; amending s. 465.003, F.S.; defining the term "acute and post-acute hospital care at home"; amending s. 465.019, F.S.; specifying that Class III institutional pharmacies may dispense, distribute, compound, and fill prescriptions for medicinal drugs for inpatient treatment and patients receiving acute and post-acute hospital care at home; amending ss. 14.33, 125.01045, 166.0446, 252.515, 395.1027, 400.143, 401.245, 401.27, 409.9201, 458.331, 459.015, 465.014, 465.015, 465.0156, 465.016, 465.0197, 465.022, 465.023, 465.1901, 465.1902, 499.003, and 893.02, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (1) through (22) of section

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401.23, Florida Statutes, are redesignated as subsections (2) through (23), respectively, a new subsection (1) is added to that section, and present subsection (19) of that section is amended, to read:

401.23 Definitions.—As used in this part, the term:

(1) "Acute and post-acute hospital care at home" means acute and post-acute health care services provided in a clinically qualified patient's permanent residence, as defined in s. 196.012(17), through a program approved by the Centers for Medicare and Medicaid Services and the Agency for Health Care Administration.

(20)~~(19)~~ "Physician" means a practitioner who is licensed under the provisions of chapter 458 or chapter 459. For the purpose of providing medical direction ~~"medical direction" as defined in~~ subsection (14) for the treatment of patients immediately before ~~prior to~~ or during transportation to a United States Department of Veterans Affairs medical facility, "physician" also means a practitioner employed by the United States Department of Veterans Affairs.

Section 2. Paragraph (c) is added to subsection (2) of section 401.272, Florida Statutes, to read:

401.272 Emergency medical services community health care.—

(2) Notwithstanding any other provision of law to the contrary:

(c) Paramedics may provide basic life support services and advanced life support services to patients receiving acute and post-acute hospital care at home as specified in the paramedic's supervisory relationship with a physician or standing orders as described in s. 401.265, s. 458.348, or s. 459.025. A physician

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

who supervises or provides medical direction to a paramedic who provides basic life support services or advanced life support services to patients receiving acute and post-acute hospital care at home pursuant to a formal supervisory relationship or standing orders is liable for any act or omission of the paramedic acting under the physician's supervision or medical direction when providing such services. The department may adopt and enforce rules necessary to implement this paragraph.

Section 3. Section 465.003, Florida Statutes, is reordered and amended to read:

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

(1) "Acute and post-acute hospital care at home" means acute and post-acute health care services provided in a clinically qualified patient's permanent residence, as defined in s. 196.012(17), through a program approved by the Centers for Medicare and Medicaid Services and the Agency for Health Care Administration.

(2)~~(1)~~ "Administration" means the obtaining and giving of a single dose of medicinal drugs by a legally authorized person to a patient for her or his consumption.

(4)~~(2)~~ "Board" means the Board of Pharmacy.

(10)~~(3)~~ "Consultant pharmacist" means a pharmacist licensed by the department and certified as a consultant pharmacist pursuant to s. 465.0125.

(11)~~(4)~~ "Data communication device" means an electronic device that receives electronic information from one source and transmits or routes it to another, including, but not limited to, any such bridge, router, switch, or gateway.

(12)~~(5)~~ "Department" means the Department of Health.

(13)~~(6)~~ "Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist to the ultimate consumer or her or his agent. As an element of dispensing, the pharmacist shall, prior to the actual physical transfer, interpret and assess the prescription order for potential adverse reactions, interactions, and dosage regimen she or he deems appropriate in the exercise of her or his professional judgment, and the pharmacist shall certify that the medicinal drug called for by the prescription is ready for transfer. The pharmacist shall also provide counseling on proper drug usage, either orally or in writing, if in the exercise of her or his professional judgment counseling is necessary. The actual sales transaction and delivery of such drug shall not be considered dispensing. The administration shall not be considered dispensing.

(14)~~(7)~~ "Institutional formulary system" means a method whereby the medical staff evaluates, appraises, and selects those medicinal drugs or proprietary preparations which in the medical staff's clinical judgment are most useful in patient care, and which are available for dispensing by a practicing pharmacist in a Class II or Class III institutional pharmacy.

(15)~~(8)~~ "Medicinal drugs" or "drugs" means those substances or preparations commonly known as "prescription" or "legend" drugs which are required by federal or state law to be dispensed only on a prescription, but shall not include patents or proprietary preparations as hereafter defined.

(18)~~(9)~~ "Patent or proprietary preparation" means a medicine in its unbroken, original package which is sold to the public by, or under the authority of, the manufacturer or

primary distributor thereof and which is not misbranded under the provisions of the Florida Drug and Cosmetic Act.

(19)~~(10)~~ "Pharmacist" means any person licensed pursuant to this chapter to practice the profession of pharmacy.

(20)(a)~~(11)(a)~~ "Pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy.

1. The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.

2. The term "institutional pharmacy" includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility, hereinafter referred to as "health care institutions," where medicinal drugs are compounded, dispensed, stored, or sold.

3. The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term "nuclear pharmacy" does not include hospitals licensed under chapter 395 or the nuclear medicine facilities of such hospitals.

4. The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection.

5. The term "Internet pharmacy" includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use

such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. Any act described in this definition constitutes the practice of the profession of pharmacy ~~as defined in subsection (13)~~.

(b) The pharmacy department of any permittee shall be considered closed whenever a Florida licensed pharmacist is not present and on duty. The term "not present and on duty" shall not be construed to prevent a pharmacist from exiting the prescription department for the purposes of consulting or responding to inquiries or providing assistance to patients or customers, attending to personal hygiene needs, or performing any other function for which the pharmacist is responsible, provided that such activities are conducted in a manner consistent with the pharmacist's responsibility to provide pharmacy services.

(21)~~(12)~~ "Pharmacy intern" means a person who is currently registered in, and attending, a duly accredited college or school of pharmacy, or who is a graduate of such a school or college of pharmacy, and who is duly and properly registered with the department as provided for under its rules.

(22)~~(13)~~ "Practice of the profession of pharmacy" includes compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug; consulting concerning therapeutic values and interactions of patent or proprietary preparations, whether pursuant to prescriptions or in the absence and entirely independent of such prescriptions or orders; and conducting other pharmaceutical services. For purposes of this subsection, the term "other pharmaceutical

services" means monitoring the patient's drug therapy and assisting the patient in the management of his or her drug therapy, and includes reviewing, and making recommendations regarding, the patient's drug therapy and health care status in communication with the patient's prescribing health care provider as licensed under chapter 458, chapter 459, chapter 461, or chapter 466, or a similar statutory provision in another jurisdiction, or such provider's agent or such other persons as specifically authorized by the patient; and initiating, modifying, or discontinuing drug therapy for a chronic health condition under a collaborative pharmacy practice agreement. This subsection may not be interpreted to permit an alteration of a prescriber's directions, the diagnosis or treatment of any disease, the initiation of any drug therapy, the practice of medicine, or the practice of osteopathic medicine, unless otherwise permitted by law or specifically authorized by s. 465.1865 or s. 465.1895. The term "practice of the profession of pharmacy" also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, and shall expressly permit a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients. The practice of the profession of pharmacy also includes the administration of vaccines to adults pursuant to s. 465.189, the testing or screening for and treatment of minor, nonchronic health conditions pursuant to s. 465.1895, and the preparation of prepackaged drug products in facilities holding Class III

institutional pharmacy permits. The term also includes the ordering and evaluating of any laboratory or clinical testing; conducting patient assessments; and modifying, discontinuing, or administering medicinal drugs pursuant to s. 465.0125 by a consultant pharmacist.

(23) ~~(14)~~ "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist. The term also includes an orally transmitted order by the lawfully designated agent of such practitioner. The term also includes an order written or transmitted by a practitioner licensed to practice in a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise of her or his professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness. The term "prescription" also includes a pharmacist's order for a product selected from the formulary created pursuant to s. 465.186. Prescriptions may be retained in written form or the pharmacist may cause them to be recorded in a data processing system, provided that such order can be produced in printed form upon lawful request.

(16) ~~(15)~~ "Nuclear pharmacist" means a pharmacist licensed by the department and certified as a nuclear pharmacist pursuant to s. 465.0126.

(6) ~~(16)~~ "Centralized prescription filling" means the filling of a prescription by one pharmacy upon request by another pharmacy to fill or refill the prescription. The term

includes the performance by one pharmacy for another pharmacy of other pharmacy duties such as drug utilization review, therapeutic drug utilization review, claims adjudication, and the obtaining of refill authorizations.

(3)~~(17)~~ "Automated pharmacy system" means a mechanical system that delivers prescription drugs received from a Florida licensed pharmacy and maintains related transaction information.

(9)~~(18)~~ "Compounding" means combining, mixing, or altering the ingredients of one or more drugs or products to create another drug or product.

(17)~~(19)~~ "Outsourcing facility" means a single physical location registered as an outsourcing facility under the federal Drug Quality and Security Act, Pub. L. No. 113-54, at which sterile compounding of a drug or product is conducted.

(8)~~(20)~~ "Compounded sterile product" means a drug that is intended for parenteral administration, an ophthalmic or oral inhalation drug in aqueous format, or a drug or product that is required to be sterile under federal or state law or rule, which is produced through compounding, but is not approved by the United States Food and Drug Administration.

(5)~~(21)~~ "Central distribution facility" means a facility under common control with a hospital holding a Class III institutional pharmacy permit that may dispense, distribute, compound, or fill prescriptions for medicinal drugs; prepare prepackaged drug products; and conduct other pharmaceutical services.

(7)~~(22)~~ "Common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights,

contract, or otherwise.

Section 4. Paragraph (d) of subsection (2) and paragraph (a) of subsection (4) of section 465.019, Florida Statutes, are amended to read:

465.019 Institutional pharmacies; permits.—

(2) The following classes of institutional pharmacies are established:

(d)1. "Class III institutional pharmacies" are those institutional pharmacies, including central distribution facilities, affiliated with a hospital which ~~that~~ provide the same services that are authorized by a Class II institutional pharmacy permit. Class III institutional pharmacies may also:

a. Dispense, distribute, compound, and fill prescriptions for medicinal drugs for inpatient treatment or for patients receiving acute and post-acute hospital care at home.

b. Prepare prepackaged drug products.

c. Conduct other pharmaceutical services for the affiliated hospital and for entities under common control that are each permitted under this chapter to possess medicinal drugs.

d. Provide the services in sub-subparagraphs a.-c. to an entity under common control which holds an active health care clinic establishment permit as required under s. 499.01(2)(r).

2. A Class III institutional pharmacy shall maintain policies and procedures addressing:

a. The consultant pharmacist responsible for pharmaceutical services.

b. Safe practices for the preparation, dispensing, prepackaging, distribution, and transportation of medicinal drugs and prepackaged drug products.

c. Recordkeeping to monitor the movement, distribution, and transportation of medicinal drugs and prepackaged drug products.

d. Recordkeeping of pharmacy staff responsible for each step in the preparation, dispensing, prepackaging, transportation, and distribution of medicinal drugs and prepackaged drug products.

e. Medicinal drugs and prepackaged drug products that may not be safely distributed among Class III institutional pharmacies.

(4)(a) Medicinal drugs shall be dispensed by ~~in~~ an institutional pharmacy to outpatients only when that institution has secured a community pharmacy permit from the department. However, medicinal drugs may be dispensed by a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber, as defined in s. 465.025(1), treating the patient in such hospital determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such prescribing and dispensing must be for a supply of the drug that will last for the greater of the following:

1. Up to 48 hours; or

2. Through the end of the next business day.

Section 5. Subsection (1) of section 14.33, Florida Statutes, is amended to read:

14.33 Medal of Heroism.—

(1) The Governor may award a Medal of Heroism of appropriate design, with ribbons and appurtenances, to a law

enforcement, correctional, or correctional probation officer, as defined in s. 943.10(14); a firefighter, as defined in s. 112.191(1)(b); an emergency medical technician, as defined in s. 401.23 ~~s. 401.23(11)~~; or a paramedic, as defined in s. 401.23 ~~s. 401.23(17)~~. A recipient must have distinguished himself or herself conspicuously by gallantry and intrepidity, must have risked his or her life deliberately above and beyond the call of duty while performing duty in his or her respective position, and must have engaged in hazardous or perilous activities to preserve lives with the knowledge that such activities might result in great personal harm.

Section 6. Subsection (1) of section 125.01045, Florida Statutes, is amended to read:

125.01045 Prohibition of fees for first responder services.—

(1) A county may not impose a fee or seek reimbursement for any costs or expenses that may be incurred for services provided by a first responder, including costs or expenses related to personnel, supplies, motor vehicles, or equipment in response to a motor vehicle accident, except for costs to contain or clean up hazardous materials in quantities reportable to the Florida State Warning Point at the Division of Emergency Management, and costs for transportation and treatment provided by air ambulance services or emergency medical services vehicles, as those terms are defined in s. 401.23 ~~ambulance services licensed pursuant to s. 401.23(4) and (5)~~.

Section 7. Subsection (1) of section 166.0446, Florida Statutes, is amended to read:

166.0446 Prohibition of fees for first responder services.—

(1) A municipality may not impose a fee or seek reimbursement for any costs or expenses that may be incurred for services provided by a first responder, including costs or expenses related to personnel, supplies, motor vehicles, or equipment in response to a motor vehicle accident, except for costs to contain or clean up hazardous materials in quantities reportable to the Florida State Warning Point at the Division of Emergency Management, and costs for transportation and treatment provided by air ambulance services or emergency medical services vehicles, as those terms are defined in s. 401.23 ~~ambulance services licensed pursuant to s. 401.23(4) and (5)~~.

Section 8. Paragraph (a) of subsection (3) of section 252.515, Florida Statutes, is amended to read:

252.515 Postdisaster Relief Assistance Act; immunity from civil liability.—

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

(a) "Emergency first responder" means:

1. A physician licensed under chapter 458.

2. An osteopathic physician licensed under chapter 459.

3. A chiropractic physician licensed under chapter 460.

4. A podiatric physician licensed under chapter 461.

5. A dentist licensed under chapter 466.

6. An advanced practice registered nurse licensed under s. 464.012.

7. A physician assistant licensed under s. 458.347 or s. 459.022.

8. A worker employed by a public or private hospital in the state.

9. A paramedic as defined in s. 401.23 ~~s. 401.23(17)~~.

10. An emergency medical technician as defined in s. 401.23 ~~s. 401.23(11)~~.

11. A firefighter as defined in s. 633.102.

12. A law enforcement officer as defined in s. 943.10.

13. A member of the Florida National Guard.

14. Any other personnel designated as emergency personnel by the Governor pursuant to a declared emergency.

Section 9. Subsection (5) of section 395.1027, Florida Statutes, is amended to read:

395.1027 Regional poison control centers.—

(5) By October 1, 1999, each regional poison control center shall develop a prehospital emergency dispatch protocol with each licensee as defined in s. 401.23 ~~by s. 401.23(13)~~ in the geographic area covered by the regional poison control center. The prehospital emergency dispatch protocol shall be developed by each licensee's medical director in conjunction with the designated regional poison control center responsible for the geographic area in which the licensee operates. The protocol shall define toxic substances and describe the procedure by which the designated regional poison control center may be consulted by the licensee. If a call is transferred to the designated regional poison control center in accordance with the protocol established under this section and s. 401.268, the designated regional poison control center shall assume responsibility and liability for the call.

Section 10. Paragraph (b) of subsection (1) of section 400.143, Florida Statutes, is amended to read:

400.143 Institutional formularies established by nursing home facilities.—

(1) For purposes of this section, the term:

(b) "Medicinal drug" has the same meaning as provided in s. 465.003 ~~s. 465.003(8)~~.

Section 11. Paragraph (b) of subsection (2) of section 401.245, Florida Statutes, is amended to read:

401.245 Emergency Medical Services Advisory Council.—

(2)(b) Representation on the Emergency Medical Services Advisory Council shall include: two licensed physicians who are medical directors ~~"medical directors"~~ as defined in s. 401.23 ~~s. 401.23(15)~~ or whose medical practice is closely related to emergency medical services; two emergency medical service administrators, one of whom is employed by a fire service; two certified paramedics, one of whom is employed by a fire service; two certified emergency medical technicians, one of whom is employed by a fire service; one emergency medical services educator; one emergency nurse; one hospital administrator; one representative of air ambulance services; one representative of a commercial ambulance operator; and two laypersons who are in no way connected with emergency medical services, one of whom is a representative of the elderly. Ex officio members of the advisory council from state agencies shall include, but are ~~shall~~ not ~~be~~ limited to, representatives from the Department of Education, the Department of Management Services, the State Fire Marshal, the Department of Highway Safety and Motor Vehicles, the Department of Transportation, and the Division of Emergency Management.

Section 12. Subsection (2) of section 401.27, Florida Statutes, is amended to read:

401.27 Personnel; standards and certification.—

(2) The department shall establish by rule educational and training criteria and examinations for the certification and recertification of emergency medical technicians and paramedics. Such rules must require, but need not be limited to:

(a) For emergency medical technicians, proficiency in basic life support as defined ~~techniques identified~~ in s. 401.23 ~~s. 401.23(7)~~ and in rules of the department.

(b) For paramedics, proficiency in advanced life support as defined ~~techniques identified~~ in s. 401.23 ~~s. 401.23(1)~~ and in rules of the department.

Section 13. Paragraph (a) of subsection (1) of section 409.9201, Florida Statutes, is amended to read:

409.9201 Medicaid fraud.—

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

(a) "Prescription drug" means any drug, including, but not limited to, finished dosage forms or active ingredients that are subject to, defined in, or described in s. 503(b) of the Federal Food, Drug, and Cosmetic Act or in s. 465.003 ~~s. 465.003(8)~~, s. 499.003(17), s. 499.007(13), or s. 499.82(10).

The value of individual items of the legend drugs or goods or services involved in distinct transactions committed during a single scheme or course of conduct, whether involving a single person or several persons, may be aggregated when determining the punishment for the offense.

Section 14. Paragraph (pp) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(pp) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for, any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 458.3265(3).

Section 15. Paragraph (rr) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(rr) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,

the Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for, any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 459.0137(3).

Section 16. Subsection (1) of section 465.014, Florida

Statutes, is amended to read:

465.014 Pharmacy technician.—

(1) A person other than a licensed pharmacist or pharmacy intern may not engage in the practice of the profession of pharmacy, except that a licensed pharmacist may delegate to pharmacy technicians who are registered pursuant to this section those duties, tasks, and functions that do not fall within the purview of s. 465.003 ~~s. 465.003(13)~~. All such delegated acts must be performed under the direct supervision of a licensed pharmacist who is responsible for all such acts performed by persons under his or her supervision. A registered pharmacy technician, under the supervision of a pharmacist, may initiate or receive communications with a practitioner or his or her agent, on behalf of a patient, regarding refill authorization requests. A licensed pharmacist may not supervise more than one registered pharmacy technician unless otherwise permitted by the guidelines adopted by the board. The board shall establish guidelines to be followed by licensees or permittees in determining the circumstances under which a licensed pharmacist may supervise more than one pharmacy technician.

Section 17. Paragraph (c) of subsection (2) of section 465.015, Florida Statutes, is amended to read:

465.015 Violations and penalties.—

(2) It is unlawful for any person:

(c) To sell or dispense drugs as defined in s. 465.003 ~~s. 465.003(8)~~ without first being furnished with a prescription.

Section 18. Subsection (9) of section 465.0156, Florida Statutes, is amended to read:

465.0156 Registration of nonresident pharmacies.—

(9) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes of this section, the registered pharmacy and the pharmacist designated by the registered pharmacy as the prescription department manager or the equivalent must be licensed in the state of location in order to dispense into this state.

Section 19. Paragraph (s) of subsection (1) of section 465.016, Florida Statutes, is amended to read:

465.016 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(s) Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~by s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship.

Section 20. Subsection (4) of section 465.0197, Florida Statutes, is amended to read:

465.0197 Internet pharmacy permits.—

(4) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes of this section, the Internet pharmacy and the pharmacist designated by the Internet pharmacy as the prescription department manager or the equivalent must be licensed in the state of location in order to dispense into this state.

Section 21. Paragraph (j) of subsection (5) of section 465.022, Florida Statutes, is amended to read:

465.022 Pharmacies; general requirements; fees.—

(5) The department or board shall deny an application for a pharmacy permit if the applicant or an affiliated person, partner, officer, director, or prescription department manager

or consultant pharmacist of record of the applicant:

(j) Has dispensed any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~by s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

For felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the department shall deny the application if upon final resolution of the case the licensee has failed to successfully complete the program.

Section 22. Paragraph (h) of subsection (1) of section 465.023, Florida Statutes, is amended to read:

465.023 Pharmacy permittee; disciplinary action.—

(1) The department or the board may revoke or suspend the permit of any pharmacy permittee, and may fine, place on probation, or otherwise discipline any pharmacy permittee if the permittee, or any affiliated person, partner, officer, director, or agent of the permittee, including a person fingerprinted under s. 465.022(3), has:

(h) Dispensed any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~by s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has

reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

Section 23. Section 465.1901, Florida Statutes, is amended to read:

465.1901 Practice of orthotics and pedorthics.—The provisions of chapter 468 relating to orthotics or pedorthics do not apply to any licensed pharmacist or to any person acting under the supervision of a licensed pharmacist. The practice of orthotics or pedorthics by a pharmacist or any of the pharmacist's employees acting under the supervision of a pharmacist shall be construed to be within the meaning of the term "practice of the profession of pharmacy" as defined ~~set forth~~ in s. 465.003 ~~s. 465.003(13)~~, and shall be subject to regulation in the same manner as any other pharmacy practice. The Board of Pharmacy shall develop rules regarding the practice of orthotics and pedorthics by a pharmacist. Any pharmacist or person under the supervision of a pharmacist engaged in the practice of orthotics or pedorthics is not precluded from continuing that practice pending adoption of these rules.

Section 24. Paragraph (j) of subsection (2) of section 465.1902, Florida Statutes, is amended to read:

465.1902 Prescription Drug Donation Repository Program.—

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

(j) "Prescription drug" has the same meaning as the term

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

"medicinal drugs" or "drugs," as those terms are defined in s. 465.003 ~~s. 465.003(8)~~, but does not include controlled substances, cancer drugs donated under s. 499.029, or drugs with an approved United States Food and Drug Administration risk evaluation and mitigation strategy that includes elements to assure safe use.

Section 25. Subsection (40) of section 499.003, Florida Statutes, is amended to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(40) "Prescription drug" means a prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active pharmaceutical ingredients subject to, defined by, or described by s. 503(b) of the federal act or s. 465.003 ~~s. 465.003(8)~~, s. 499.007(13), subsection (31), or subsection (47), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

Section 26. Paragraph (c) of subsection (24) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(24) "Prescription" includes any order for drugs or medicinal supplies which is written or transmitted by any means of communication by a licensed practitioner authorized by the laws of this state to prescribe such drugs or medicinal supplies, is issued in good faith and in the course of

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

professional practice, is intended to be dispensed by a person authorized by the laws of this state to do so, and meets the requirements of s. 893.04.

(c) A prescription for a controlled substance may not be issued on the same prescription blank with another prescription for a controlled substance that is named or described in a different schedule or with another prescription for a medicinal drug, as defined in s. 465.003 ~~s. 465.003(8)~~, that is not a controlled substance.

Section 27. This act shall take effect July 1, 2022.

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 7, 2022

I respectfully request that **Senate Bill #1222**, relating to Acute Care At-home Patients in Nonemergent Community Settings, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

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

2/15/22
Meeting Date

Rules
Committee

SB 1222
Bill Number or Topic

Amendment Barcode (if applicable)

Name LAYNE SMITH

Phone 904-953-7334

Address 4500 SAN PABLO RD
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Jacksonville FL 32224
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
MAYO CLINIC

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

15 Feb 2022
Meeting Date

Rules
Committee

1222
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matthew Holliday

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Address 350 7th Street North
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Naples FL 34102
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:
NCH Healthcare System

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

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1236
INTRODUCER:	Rules Committee and Senator Jones
SUBJECT:	County and Municipal Detention Facilities
DATE:	February 15, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples/Hunter	Ryon	CA	**Favorable**
2.	Siples	Jones	CJ	**Favorable**
3.	Siples/Hunter	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1236 establishes the Florida Model Jail Standards (FMJS) Working Group to develop and maintain model standards for county and municipal detention facilities. The FMJS Working Group is comprised of seven members appointed by the Florida Sheriffs Association (FSA) and the Florida Association of Counties.

The bill requires every sheriff, county, city, or other entity that operates a county or municipal detention facility to adopt, at a minimum, the approved FMJS, which address the construction, equipping, maintenance, and operation of county and municipal detention facilities, as well as the confinement and classification of prisoners.

Under the bill's provisions, each county or municipal detention facility must be inspected at least twice annually. One inspection is announced and the other inspection is unannounced. The announced inspection evaluates a facility's compliance with all the FMJS and the unannounced inspection is limited to a review for serious violations. The two inspections must be at least 120 days apart.

The bill prohibits a county or municipal detention facility from refusing to be inspected or refusing access to its facility. If the officer in charge of the facility so refuses, then his or her salary must be withheld and deposited in the facility's inmate welfare fund for each day the person refuses such inspection or access. The penalty applies regardless of whether the person is elected, appointed, or an employee of a county, city, or other political division of the state.

The bill provides if, upon inspection, a facility is noncompliant with the FMJS, it has 30 days to cure the noncompliance, if it is not a serious violation. If it is a serious violation, the facility has 24 days to cure the noncompliance. For notable, or non-serious violations, the facility will be re-inspected within 10 days after the 30-day correction period. If it is still noncompliant, the facility will have 15 days to cure the noncompliance and a second re-inspection will be conducted within 48 hours thereafter. For serious violations, the facility will be re-inspected within 48 hours after the serious violation was first observed. If a facility continues to be noncompliant on a notable violation after the first and second re-inspection or on a serious violation after the re-inspection, it will be subject to penalties.

The bill assigns the following penalties for noncompliance with the FMJS:

- If an annual inspection reveals that a detention facility is noncompliant with a notable violation and the noncompliance is not corrected within the initial 30-day correction period, the facility must pay the following amount into the facility's inmate welfare fund for each day that the facility is not in compliance with the FMJS:
  - $500 per day of noncompliance for the 31st day through the 60th day;
  - $1,000 per day of noncompliance for the 61st day through the 90th day; and
  - $2,000 per day of noncompliance for the 91st day and all remaining days.
- If an annual inspection reveals that a detention facility is noncompliant with a serious violation and the noncompliance is not corrected within 24 hours after its discovery, the facility must pay $2,000 per day that the FMJS Working Group determines that the facility is noncompliant.

In addition to the above-listed penalties, if a second re-inspection for a notable violation or a re-inspection for a serious violation reveals that the detention facility continues to be noncompliant, the facility must cease operation of the detention facility within 14 days and must contract with one or more other detention facilities to house its prisoners until the facility is determined to be in compliance with the FMJS. The 14-day time period commences upon:

- The expiration of the appeal process, as provided in the FMJS;
- The facility failing to file a timely appeal; or
- The conclusion of an appeal process that results in a finding that the detention facility is noncompliant with the FMJS.

If the detention facility consists of separate detention campuses, only the campus that is determined to be noncompliant must cease operations. The receiving facility must be in compliance with the FMJS and the noncompliant facility is responsible for the costs accrued by the receiving facility for housing its prisoners.

The bill defines the terms "serious violation" and "notable violation" and revises the definitions of "county detention facility" and "municipal detention facility."

The bill may have a fiscal impact on both the private and government sector. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2022.

II. Present Situation:

County and Municipal Detention Facilities

A county detention facility is any county jail, stockade, work camp, residential probation center, or any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.[1] Sheriffs operate the majority of county detention facilities, with counties operating the remainder.[2] County detention facilities house inmates who have been arrested and are awaiting trial, as well as inmates who have been convicted and sentenced to less than one year of incarceration or awaiting transfer to the Department of Corrections (DOC).

The DOC reports that approximately 53,658 inmates were incarcerated in the state's county detention facilities during the month of December 2021.[3]

A municipal detention facility is a city jail, stockade, prison camp, or any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of a violation of municipal laws or ordinances.[4]

Florida Model Jail Standards

Prior to 1996, the Department of Corrections was responsible for the standards and inspection process for local jails.[5] In 2006, the Legislature enacted legislation that established a five-person workgroup, consisting of three persons appointed by the Florida Sheriffs Association (FSA) and two persons appointed by the Florida Association of Counties, to develop model standards for county and municipal detention facilities.[6] The model standards developed by the workgroup must address:

- The construction, equipping, maintenance, and operation of county and municipal detention facilities, including the:
  - Cleanliness and sanitation;
  - Number of prisoners who may be housed per specified unit of floor space;
  - Quality, quantity, and diversity of food served and the manner in which food is served;
  - Furnishing of medical attention and health and comfort items; and
  - Disciplinary treatment which may be meted out to prisoners.

---

[1] Section 951.23(1)(a), F.S.
[2] For example, the county commissions operate the county detention facilities in Escambia, Gulf, Jackson, Miami-Dade, Okaloosa, Orange, Osceola, and Volusia counties (*see* https://myescambia.com/our-services/corrections/community-detention; http://www.gulfcounty-fl.gov/county_government/detention_facility; https://jacksoncountyfl.gov/services/correctional-facility/; https://www.miamidade.gov/global/corrections/home.page; http://www.co.okaloosa.fl.us/corrections/history; http://www.ocfl.net/tabid/367/default.aspx#.X_MzJthKiUl; https://www.osceola.org/agencies-departments/corrections/about/; and https://www.volusia.org/services/public-protection/corrections/; respectively (all websites last visited February 15, 2022)).
[3] Department of Corrections, *Florida County Detention Facilities Average Inmate Population*, December 2021, p. 2, *available at* http://www.dc.state.fl.us/pub/jails/2021/jails-2021-12.pdf (last visited February 15, 2022).
[4] Section 951.23(1)(d), F.S.
[5] Florida Sheriffs Association, *Florida Model Jail Standards: What is FMJS?*, *available at* https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards (last visited February 15, 2022).
[6] Section 951.23(4)(a), F.S. *See also* s. 31, ch. 96-312, Laws of Fla.

- The confinement of prisoners by classification and providing, whenever possible, for classifications that separate males from females, juveniles from adults, felons from misdemeanants,[7] and those awaiting trial from those convicted. Additionally, it should provide for the separation of special risk prisoners, such as the mentally ill, suicide risks, drug and alcohol addicts, sex deviants, and any other classification the local unit deems necessary.[8]

The Florida Model Jail Standards (FMJS) are minimum standards that county and municipal detention facilities in Florida must meet to ensure the constitutional rights of those incarcerated are upheld.[9] The FMJS Committee, the group created to comply with s. 951.23, F.S., develops the FMJS and enforces the model standards it has adopted.[10] The FSA provides support to the FMJS Committee, but is a separate entity. The FMJS Committee has six subcommittees, each with a distinct mission and objective:

- Quality Assurance and Improvement Subcommittee, which monitors and reviews the status of the FMJS program and its effectiveness;
- Standards Review Subcommittee, which maintains a professional manual consistent with the most current practices in the corrections industry for adult and youth detention facilities;
- Medical Subcommittee, which fosters the effectiveness of the medical care and health of individuals incarcerated in county detention facilities;
- Compliance Review Subcommittee, which objectively conducts reasonable reviews of facility inspection results and remains unbiased while reviewing facility grievances and presenting clear and concise evidence to the full FMJS Committee;
- Training Subcommittee, which establishes a training curriculum for the Jail Inspectors and Jail Medical Inspectors certification program;
- PREA Subcommittee, which establishes a set of minimum model jail standards as required by the Prison Rape Elimination Act of 2003 (PREA); and
- Technical Support Subcommittee, which responds to, reviews, and makes recommendations of issues that are directly related to corrections as directed by the full FMJS Committee.[11]

Once the FMJS were adopted by the FSA and the Florida Association of Counties, they were filed with the Department of State.[12] The FMJS Committee performs a biannual review of all existing standards.[13] Amendment or repeal of any provision of the FMJS is within the discretion of the FMJS Committee.[14]

The FMJS Committee provides notice of all its proceedings, as well as any adoption, amendment, or repeal of provisions of the FMJS, to all county and municipal detention

[7] However, non-dangerous felons may be housed with misdemeanants.
[8] *Supra* note 6.
[9] *Supra* note 5.
[10] *Id*.
[11] *Id*.
[12] Florida Sheriffs Association and Florida Association of Counties, *Florida Model Jail Standards,* pg. 10 (Eff. Apr. 1, 2021), *available at* https://www.flsheriffs.org/uploads/docs/FMJS_Manual_Eff_04_01_21.pdf (last visited February 15, 2022).
[13] *Id*., at pg. 74.
[14] *Id*., at pg. 10.

facilities.[15] Notice of any official FMJS Committee business is available, upon request, to the public.

FMJS Certified Inspectors

FMJS Certified Jail Inspectors have successfully completed the FMJS Inspector Certification Course and are recognized by the FMJS Committee to conduct correctional operations inspections.[16] To qualify as a FMJS Certified Jail Inspector, an individual must:

- Be actively employed or a retired certified correctional officer with five years' experience in the care, custody, and control of inmates or a civilian employee with eight years of experience in jail operations; and
- Have written endorsement(s) from the candidate's Sheriff. If the candidate is not employed by a Sheriff's office, written endorsement must be submitted by the Chief Executive Officer of the correctional facility with which the candidate is employed.[17]

Certified Jail Inspectors must be re-certified every four years and successfully pass the certification exam prior to a new certification being issued. Each FMJS Certified Jail Inspector must complete one jail inspection each year in order to maintain his or her certification. The FMJS Certified Jail Inspectors must report their inspection activity to the FMJS Committee Chair and the FSA each year for compliance.[18]

FMJS Certified Medical Inspectors have successfully completed the FMJS Medical Inspector Certification Course and are recognized by the FMJS Committee to conduct medical compliance inspections.[19] To qualify as a FMJS Certified Medical Inspector, an individual must:

- Be a Florida-licensed physician, nurse, advanced practice registered nurse, physician assistant, emergency medical technician, or paramedic;
- Be actively employed or retired from active employment in a jail or prison setting for a minimum of three years; and
- Have written endorsement(s) from the candidate's Sheriff, and if services are contracted, an endorsement from the candidate's employing Chief Executive Officer. If the candidate is not employed by a Sheriff's office, written endorsement must be submitted by the Chief Executive Officer of the correctional facility with which the candidate is employed.[20]

Certified Medical Inspectors must be re-certified every four years and to recertify, the Certified Medical Inspector must complete a classroom re-certification course and successfully pass the test, and successfully complete a refresher course every four years.[21] Each FMJS Certified Medical Inspector must complete one medical inspection each year in order to maintain his or her certification. The FMJS Certified Medical Inspectors must report their inspection activity to the FMJS Committee Chair and the FSA each year for compliance.[22]

[15] *Id*, at pg. 74.
[16] *Id*., at pgs. 10-11.
[17] *Id*., at pg. 11.
[18] *Id*.
[19] *Id*.
[20] *Id*., at pgs. 11-12.
[21] *Id*., at pg. 12.
[22] *Id*., at pg. 11.

Currently, there are 180 Certified Jail Inspectors and 54 Certified Medical Inspectors.[23]

Inspections

The officer-in-charge[24] of a facility must contract with or arrange for a FMJS Certified Inspector(s) to inspect all county and municipal jail facilities, at least annually.[25] The cost of the inspection is absorbed by the sheriff or the county, in the case of a county-operated jail.[26] The inspection is comprised of two components: correctional operations and medical compliance.[27]

The FMJS Certified Jail or Medical Inspector must report his or her findings to the officer-in-charge, within 14 days of the inspection.[28] If the report indicates one or more violations, the officer-in-charge must develop a corrective action plan, which specifies the corrective action to be taken, the timetable for such corrective action, and the resources to be used. The officer-in-charge must forward a copy of the corrective action plan to the FMJS Chairperson within 30 days after receipt of the inspection report. The inspection report, responses, and other documents prepared by the FMJS inspector(s) or officer-in-charge are public records and subject to review under ch. 119, F.S.[29]

If action is not taken to correct violations, a facility may be subject to s. 951.23(6), F.S. Under this provision, if a court finds that a county or municipal detention facility does not meet minimum standards, it may order all or some of the prisoners to be removed and confined to another facility within the same county or municipality or in some other county or municipality. In such cases, the costs of maintaining the removed prisoners is borne by the county or municipality from which the prisoners have been removed.[30]

Violations

Under the FMJS, there are two categories of violations: serious violations and notable violations. A serious violation is a violation or condition that appears to pose a substantial and immediate danger to the life, health, or safety of one or more prisoner or employee.[31] A notable violation is any deficiency to the standards that is not a "serious violation."[32]

If a FMJS Certified Inspector observes a serious violation, he or she must immediately notify the officer-in charge of the violation and the duty to correct. The officer-in-charge must ensure corrective action be taken within 24 hours and must submit a report in response to the violation.

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[23] Email from Matt Dunagan, Deputy Director of Operations, Florida Sheriffs Association (Jan. 21, 2022) (on file with the Senate Committee on Community Affairs).
[24] The "officer-in-charge" is the Sheriff, Chief Correctional Officer, or any correctional administrator appointed by a City or County Board of Commissioners.
[25] *Supra* note 12, at pg. 12. The annual inspection must be completed by December 31st each year.
[26] Email correspondence from Matt Dunagan, Deputy Executive Director of Operations, Florida Sheriffs Association, (Jan. 28, 2022) (on file with the Senate Committee on Criminal Justice).
[27] The units may not be self-inspected.
[28] *Supra* note 12, at pg. 14.
[29] *Id*.
[30] Section 951.23(6)(b), F.S.
[31] *Id*., at pgs. 8 and 14.
[32] *Id*., at pgs. 7 and 16.

A re-inspection must be completed within 48 hours of the time when the serious violation was first observed to determine whether it has been corrected. Examples of a serious violation include:

- Failure of the policy and procedure directives to contain emergency plans and tool, knife, and firearms control;
- Persons assigned to food service areas known to have or suspected of having communicable diseases, open wounds, sores, or respiratory infections;
- Failure to provide a modified diet when ordered by the health authority, if such denial would be immediately detrimental to the health and wellbeing of prisoner(s);
- Failure to provide separate storage for poisons and hazardous chemicals away from food;
- Failure to establish agreement with one or more health providers to provide emergency services;
- Failure to maintain first aid supplies on premises;
- Failure to have at least one staff member on duty trained in the delivery of first aid care and CPR;
- Permitting firearms and ammunition in secure areas of the facility except in the case of an emergency, and approved by the officer-in-charge;
- Failure to meet fire, safety, and prevention standards by a state certified fire inspector as being life threatening; and
- Failure to comply with the FMJS provisions related to restrictive housing of pregnant prisoners, a secondary means of egress or fire exit from each housing area and floor where inmates are housed, and prohibition on prisoners from supervising, controlling, exerting, or assuming any authority over other prisoners.[33]

Inmate Commissary and Welfare Fund

Section 951.23(9), F.S., authorizes commissaries to be operated in detention facilities. If a commissary is established, an inmate welfare fund must also be established. Profits from the commissary must be used for overall inmate welfare, and an inmate welfare fund committee must recommend the expenditures that are to be made.[34] However, profits may also be used to pay for expenses related to such operation, including compensation for commissary employees and gratuities for prisoners who assist such employees.[35]

III. Effect of Proposed Changes:

Definitions

The bill amends s. 951.23, F.S., to revise the definition of "county detention facility" to include facilities operated by either a board of county commissioners, a sheriff, or another entity. Similarly, the bill revises the definition of "municipal detention facility" to include facilities operated by a city or other entity.

[33] *Id*., at pgs. 15-16.
[34] Section 951.23(9)(d), F.S.
[35] Section 951.23(9)(c), F.S.

Model Jail Standards

The bill repeals the current five-person workgroup, and establishes the seven-member Florida Model Jail Standards Working Group as the entity responsible for developing and maintaining model standards for county and municipal detention facilities. The FMJS Working Group is to be comprised of:

- Three currently elected sheriffs appointed by the Florida Sheriffs Association;
- A Florida-licensed physician with at least two years' experience in correctional health care appointed by the Florida Sheriffs Association;
- A currently elected county commissioner appointed by the Florida Association of Counties;
- An experienced jail administrator of a Florida county jail operated by a county, appointed by the Florida Association of Counties; and
- A Florida-licensed psychiatrist with at least two years' experience in correctional psychiatry, appointed by the Florida Association of Counties.

The bill requires every sheriff, county, city, or other entity that operates a county or municipal detention facility to adopt, at a minimum, the Working Group-approved FMJS, with respect to:

- The construction, equipping, maintenance, and operation of county and municipal detention facilities;
- The cleanliness and sanitation of the facilities;
- The number of prisoners who may be housed per specified unit of floor space;
- The quality, quantity, and supply of bedding;
- The quality, quantity, and diversity of food served and the manner in which food is served;
- The furnishing of medical attention and health and comfort items;
- The disciplinary treatment which may be meted out to prisoners;
- The confinement of prisoners by classification and providing, whenever possible, for classifications that separate males from females, juveniles from adults, and felons from misdemeanants.[36] Additionally, it should provide for the separation of special risk prisoners, such as the mentally ill, suicide risks, drug and alcohol addicts, sex deviants, and any other classification the local unit deems necessary. Special consideration must be given to the appropriate housing of pregnant women; and
- Additional standards relating to inspections, as discussed below.

The bill removes the criteria that those awaiting trial be separated from those who have been convicted.

Inspections

The bill establishes a system for municipal and county detention facilities to be inspected for compliance with the FMJS. The bill requires that the FMJS Working Group identify standards or conditions for which noncompliance is a serious or notable violation.

Under the bill, each county and municipal detention facility must be inspected biannually for compliance with the FMJS. One inspection must be announced, with reasonable advance notice of the date on which the inspection is to occur, and the other must be a limited, unannounced

[36] However, non-dangerous felons may be housed with misdemeanants.

inspection, with no advanced notice. The announced annual inspection must examine compliance with all of the FMJS. The unannounced inspection is limited to a review for serious violations. The inspections must be at least 120 days apart.

The bill prohibits a facility from refusing to be inspected or refusing access to the facility by FMJS inspectors. If a person in charge of a facility refuses to allow inspection or provide access to the facility, then his or her salary must be withheld for each day he or she refuses such inspection or access. The monies withheld must be deposited into the facility's inmate welfare fund. This penalty applies to any person refusing such inspection or access, regardless of whether the person is elected, appointed, or an employee of a county, city, or other political subdivision of the state.

If, during one of the inspections, a detention facility is found to be noncompliant with the FMJS for a notable violation, the facility must correct the noncompliance within 30 days. After the 30-day correction period or upon the facility notifying the FMJS Working Group that it has corrected its noncompliance, whichever is earlier, the facility must be re-inspected within 10 days. If upon re-inspection, the facility continues to be noncompliant, the facility has 15 days to correct the noncompliance and have a second re-inspection within 48 hours thereafter. If the facility continues to be noncompliant after the first and second re-inspection, then it will be subject to the penalties discussed below.

The bill requires a serious violation to be corrected within 24 hours and a re-inspection must occur within 48 hours after the serious violation was first observed. A re-inspection may occur prior to the expiration of the 24-hour period if the facility notifies the FMJS Working Group that it has cured the noncompliance. If upon re-inspection, the facility continues to be noncompliant, then it will be subject to the penalties discussed below.

Penalties for Noncompliance

The bill assigns the following penalties for noncompliance with the FMJS:

- If an annual inspection reveals that a detention facility is noncompliant with a notable violation and the noncompliance is corrected within the initial 30-day correction period, there is no penalty.
- If an annual inspection reveals that a detention facility is noncompliant with a notable violation and the noncompliance is not corrected within the initial 30-day correction period, the facility must pay the following amount into the facility's inmate welfare fund for each day that the facility is not in compliance with the FMJS:
  - $500 per day of noncompliance for the 31st day through the 60th day;
  - $1,000 per day of noncompliance for the 61st day through the 90th day; and
  - $2,000 per day of noncompliance for the 91st day and all remaining days.
- If an annual inspection reveals that a detention facility is noncompliant with a serious violation and the noncompliance is corrected within 24 hours after its discovery, there is no penalty.
- If an annual inspection reveals that a detention facility is noncompliant with a serious violation and the noncompliance is not corrected within 24 hours after its discovery, the facility must pay $2,000 per day that the facility remains noncompliant.

In addition to the above-listed penalties, if a second re-inspection for a notable violation or a re-inspection for a serious violation reveals that the detention facility continues to be noncompliant, the facility must cease operation of the detention facility within 14 days and must contract with one or more other detention facilities to house its prisoners until the facility is determined to be in compliance with the FMJS. The 14-day time period commences upon:

- The expiration of the appeal process, as provided in the FMJS;
- The facility failing to file a timely appeal; or
- The conclusion of an appeal process that results in a finding that the detention facility is noncompliant with the FMJS.

If the detention facility consists of separate detention campuses, only the campus that is determined to be noncompliant must cease operations. The receiving facility must be in compliance with the FMJS and the noncompliant facility is responsible for the costs accrued by the receiving facility for housing its prisoners. The bill provides that the penalty for noncompliance during a second re-inspection for a notable violation or a re-inspection for a serious violation may not be deemed to limit or prevent any other remedies or causes of action against a facility or an entity that operates a facility that may be brought under any other law, ordinance, or rule.

The bill provides the following definitions related to the FMJS:

- "County detention facility" has the same meaning as in s. 951.23, F.S.
- "Jail standards" means the Florida Model Jail Standards, established by the Working Group, as set forth in s. 951.23(4)(a), F.S.
- "Municipal detention facility" has the same meaning as in s. 951.23, F.S.
- "Notable violation" is any violation of the FMJS that is not a serious violation.
- "Serious violation" is any violation of the FMJS or other conditions or practices that appear to pose a substantial and immediate danger to the life, health, or safety of one or more inmates or employees.
- "Working Group" means the Florida Model Jail Standards Working Group, as provided in s. 951.23(4)(a), F.S.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. Under the bill, a county or municipality may need to expend funds to make improvements to a local detention facility in order to comply with the standards developed by the FMJS Working Group. Additionally, a county or municipality may be responsible for the cost of each inspection of a facility, which will occur biannually. Laws having an "insignificant fiscal impact" are exempt

from the mandate requirements, which for Fiscal Year 2021-2022 is forecast at approximately $2.3 million. [37, 38, 39]

If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The FMJS Working Group may incur administrative and operational costs related to the inspection of county and municipal detention facilities and the enforcement of the FMJS. Individuals who refuse to comply with the bill's inspection or access requirements, will be subject to a loss of wages.

C. Government Sector Impact:

County or municipal detention facilities who are not in compliance with the FMJS may incur costs associated with complying with the standards. According to the FSA, the sheriff offices and county-operated jails will continue to bear the costs of the

[37] FLA. CONST. art. VII, s. 18(d).
[38] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited February 15, 2022).
[39] Based on the Florida Demographic Estimating Conference's December 13, 2021 population forecast for 2022 of 22,247, 451. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited February 15, 2022).

inspections.[40] Since the bill requires biannual inspections, rather than the annual inspections under the current FJMS, the costs to these entities will likely increase.

VI. Technical Deficiencies:

It is unclear how the penalties assessed under the bill will be enforced if a county or municipal entity refuses or is unable to pay the fines, or refuses to withhold the wages of an individual who refuses to allow inspection or access to the detention facility.

VII. Related Issues:

Employers that fail to pay the earned wages of an employee in a timely manner may be subject to legal action under applicable state and federal wage laws.[41] An employer who withholds an individual's wages may also be subject to a civil theft action.[42]

VIII. Statutes Affected:

This bill substantially amends section 951.23 of the Florida Statutes.

This bill creates section 951.2302 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 15, 2022:
The committee substitute:

- Renames the Florida Model Jail Standards Commission as the Florida Model Jail Standards Working Group.
- Defines the terms "serious violation" and "notable violation."
- Makes other non-substantive, technical, and organizational changes for clarity and readability.

B. Amendments:

None.

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

[40] *Supra* note 26.
[41] *See generally*, pt. I, ch. 448, F.S., and Fair Labor Standards Act, 29 U.S.C. s. 201, et.al.
[42] *See* s. 772.11, F.S.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete lines 61 - 252

and insert:

(4) COUNTY AND MUNICIPAL DETENTION FACILITY STANDARDS ~~FOR SHERIFFS AND CHIEF CORRECTIONAL OFFICERS~~.—

(a) There is ~~shall be~~ established the Florida Model Jail Standards Working Group to develop and maintain model standards for county and municipal detention facilities. The ~~a~~ seven-member ~~five-member~~ working group shall consist ~~consisting~~ of:

1. Three currently elected sheriffs, ~~persons~~ appointed by



the Florida Sheriffs Association.

2. A physician licensed in the state with at least 2 years of experience in correctional health care, appointed by the Florida Sheriffs Association. ~~and~~

3. A currently elected county commissioner, ~~two persons~~ appointed by the Florida Association of Counties.

4. An experienced jail administrator of a county jail operated by a county, appointed by the Florida Association of Counties.

5. A psychiatrist licensed in the state with at least 2 years of experience in correctional psychiatry, appointed by the Florida Association of Counties ~~to develop model standards for county and municipal detention facilities~~.

(b) Every sheriff, county, city, or other entity that operates a municipal detention facility or a county detention facility ~~By October 1, 1996, each sheriff and chief correctional officer~~ shall adopt, at a minimum, the Florida Model Jail Standards approved by the working group with reference to all of the following:

1.~~a.~~ The construction, equipping, maintenance, and operation of county and municipal detention facilities.

2.~~b.~~ The cleanliness and sanitation of county and municipal detention facilities.~~;~~

3. The number of county and municipal prisoners who may be housed therein per specified unit of floor space.~~;~~

4. The quality, quantity, and supply of bedding furnished to county and municipal ~~such~~ prisoners.~~;~~

5. The quality, quantity, and diversity of food served to county and municipal prisoners ~~them~~ and the manner in which it



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is served.~~;~~

6. The furnishing ~~to them~~ of medical attention and health and comfort items to county and municipal prisoners.~~; and~~

7. The disciplinary treatment which may be meted out to county and municipal prisoners ~~them~~.

~~Notwithstanding the provisions of the otherwise applicable building code, a reduced custody housing area may be occupied by inmates or may be used for sleeping purposes as allowed in subsection (7). The sheriff or chief correctional officer shall provide that a reduced custody housing area shall be governed by fire and life safety standards which do not interfere with the normal use of the facility and which affect a reasonable degree of compliance with rules of the State Fire Marshal for correctional facilities.~~

8.~~2.~~ The confinement of prisoners by classification and providing, whenever possible, for classifications which separate males from females, juveniles from adults, and felons from misdemeanants, and ~~those awaiting trial from those convicted and~~, in addition, providing for the separation of special risk prisoners, such as the mentally ill, alcohol or narcotic addicts, sex deviates, suicide risks, and any other classification which the local unit may deem necessary for the safety of the prisoners and the operation of the facility pursuant to degree of risk and danger criteria. Nondangerous felons may be housed with misdemeanants. Special consideration must be given to the appropriate housing of pregnant women as provided under s. 944.241.

9. Requirements for the inspection of county and municipal



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detention facilities and the penalties for noncompliance as provided in s. 951.2302.

Notwithstanding the provisions of the otherwise applicable building code, a reduced custody housing area may be occupied by inmates or may be used for sleeping purposes as allowed in subsection (7). The sheriff or chief correctional officer shall provide that a reduced custody housing area shall be governed by fire and life safety standards which do not interfere with the normal use of the facility and which affect a reasonable degree of compliance with rules of the State Fire Marshal for correctional facilities.

(c) ~~(b)~~ A county or municipal detention facility which stocks medicinal drugs in quantities other than individual prescriptions must obtain the services of a consultant pharmacist or dispensing physician and comply with the licensing requirements of chapter 465. A facility which has a valid license pursuant to chapter 465 shall have that part of its medical services relating to procedures for the safe handling and storage of medicinal drugs exempt from the inspection requirements of this section. A facility which maintains only individual prescriptions dispensed by a licensed pharmacist is not required to be licensed under chapter 465.

Section 2. Section 951.2302, Florida Statutes, is created to read:

951.2302 Inspection of county and municipal detention facilities; penalties for noncompliance with jail standards.—

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

(a) "Detention facility" includes a county detention



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facility and a municipal detention facility as those terms are defined in s. 951.23(1)(a) and (d) respectively.

(b) "Jail standards" means the Florida Model Jail Standards established by the working group.

(c) "Notable violation" means any violation of the jail standards that is not a serious violation.

(d) "Serious violation" means any violation of the jail standards or other conditions or practices that appear to pose a substantial and immediate danger to the life, health, or safety of one or more inmates or employees.

(e) "Working group" means the Florida Model Jail Standards Working Group as provided in s. 951.23(4)(a).

(2) VIOLATIONS CRITERIA.—The jail standards must identify those standards or conditions for which noncompliance by a detention facility is a serious violation or a notable violation.

(3) TYPE AND FREQUENCY OF INSPECTIONS.—The jail standards must require that each detention facility be inspected, at a minimum, twice annually for compliance with the jail standards as provided in paragraphs (a) and (b). Each inspection must occur at least 120 days apart. A detention facility may not refuse to be inspected or prevent access to the detention facility.

(a) One inspection must include an inspection for compliance with all jail standards. A detention facility must be provided reasonable advance notice of the date on which this inspection will occur.

(b) One inspection must include an inspection for serious violations only. This inspection must be an unannounced



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inspection, with no advance notice provided to a detention facility.

(4) REINSPECTIONS.—

(a) If an inspection finds a detention facility to be noncompliant with the jail standards for a notable violation, the detention facility must correct the noncompliance within 30 days and must be reinspected within 10 days after the 30-day correction period, or upon the detention facility notifying the working group that it has corrected its noncompliance, whichever is earlier. If upon reinspection the detention facility is still found to be noncompliant, the detention facility must correct the noncompliance within 15 days and must have a second reinspection within 48 hours thereafter.

(b) If an inspection finds a detention facility to be noncompliant with the jail standards for a serious violation, the detention facility must correct the noncompliance within 24 hours and must be reinspected within 48 hours after the violation was first observed. This paragraph does not prevent reinspection from occurring before the expiration of the 24-hour period if a detention facility notifies the working group that it has cured the noncompliance before such time.

(5) PENALTIES FOR NONCOMPLIANCE WITH JAIL STANDARDS.—

(a) If an inspection reveals that a detention facility is noncompliant with the jail standards for a notable violation, and the noncompliance is not corrected as provided in paragraph (4)(a), the detention facility must pay into the detention facility's inmate welfare fund the following amounts for each day the detention facility is noncompliant with the jail standards:



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1. $500 per day for the 31st day through the 60th day of noncompliance.

2. $1,000 per day for the 61st day through the 90th day of noncompliance.

3. $2,000 per day for the 91st day and all remaining days the detention facility is not in compliance.

(b) If a detention facility fails to correct a serious violation as required in paragraph (4)(b), the detention facility must pay into the detention facility's inmate welfare fund $2,000 per day until the serious violation has been corrected.

(c)1. In addition to the penalties set forth in paragraphs (a) and (b), if a second reinspection for a notable violation or a reinspection for a serious violation reveals that a detention facility is noncompliant with the jail standards, the detention facility must cease operations as a detention facility within 14 days and must contract with one or more other detention facilities to house the noncompliant facility's inmates until such time as the facility is determined to be in compliance with the jail standards.

2. The 14-day time period shall commence upon the expiration of an appeal process to be specified in the jail standards, with the detention facility failing to file a timely appeal, or upon the conclusion of the appeal process specified in the jail standards, with a denial of the appeal resulting in a finding that the detention facility is noncompliant with the jail standards.

3. The receiving detention facility or detention facilities must be in compliance with the jail standards in order to house



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the noncompliant detention facility's inmates.

4. If a detention facility consists of separate detention campuses, only the campus determined to be noncompliant with the jail standards must cease operations as provided in this paragraph.

5. The noncompliant detention facility is responsible for the costs accrued by another detention facility or detention facilities for housing the noncompliant detention facility's inmates.

6. This paragraph may not be deemed to limit or prevent any other remedies or causes of action against a detention facility or an entity that operates a detention facility which may be brought under any other law, ordinance, or rule.

(d) If any person in charge of a detention facility refuses to provide access to the detention facility or allow an inspection of the detention facility, the person's salary must be withheld for each day he or she refuses such inspection or access, and the amount withheld must be deposited into the detention facility's inmate welfare fund. This paragraph applies regardless of whether the person refusing to allow the inspection or refusing access to the detention facility is elected, appointed, or an employee of a county, a city, or any other political subdivision of the state.

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

And the title is amended as follows:

Delete lines 6 - 21

and insert:

Florida Model Jail Standards Working Group; providing

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the working group's membership; specifying that each entity that operates a municipal or county detention facility shall adopt the Florida Model Jail Standards approved by the working group; specifying minimum standards for the working group; creating s. 951.2302, F.S.; defining terms; requiring the jail standards to include criteria and standards for what actions result in serious violations and notable violations; specifying that the jail standards must require that each county detention facility and municipal detention facility be inspected, at a minimum, twice annually; prohibiting any person in charge of a county detention facility or municipal detention facility from refusing to be inspected or refusing access to inspectors; providing

By Senator Jones

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A bill to be entitled

An act relating to county and municipal detention facilities; amending s. 951.23, F.S.; revising the definitions of the terms "county detention facility" and "municipal detention facility"; creating the Florida Model Jail Standards Commission to supersede a working group; prescribing the commission's membership; specifying that each entity that operates a municipal or county detention facility shall adopt the Florida Model Jail Standards approved by the commission; specifying minimum commission standards; creating s. 951.2302, F.S.; defining terms; requiring the jail standards to include criteria and standards for what actions result in serious violations and notable violations; specifying that the jail standards must require that each county detention facility and municipal detention facility be inspected, at a minimum, twice annually; prohibiting any person in charge of a county detention facility or municipal detention facility from refusing to be inspected or refusing access to commission inspectors; providing annual inspection requirements; providing procedures and requirements for reinspections of detention facilities due to noncompliance; providing timeframes within which detention facilities must correct violations; providing financial penalties for persons in charge of detention facilities who refuse to allow inspections or who refuse to provide access to detention facilities, or for facilities found to be

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noncompliant with the jail standards during an annual inspection or any reinspection; requiring certain noncompliant detention facilities to cease operations and contract with other detention facilities for inmate housing under certain circumstances; requiring that the assessed financial penalties be deposited into the detention facility's inmate welfare fund; providing an effective date.

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

Section 1. Paragraphs (a) and (d) of subsection (1) and paragraph (a) of subsection (4) of section 951.23, Florida Statutes, are amended to read:

951.23 County and municipal detention facilities; definitions; administration; standards and requirements.—

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

(a) "County detention facility" means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of a ~~either~~ felony or a misdemeanor, regardless of whether such facility is operated by a board of county commissioners, a sheriff, or any other entity.

(d) "Municipal detention facility" means a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted

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of violation of municipal laws or ordinances, regardless of whether such facility is operated by a city or any other entity.

(4) STANDARDS FOR SHERIFFS AND CHIEF CORRECTIONAL OFFICERS.—

(a) There is ~~shall be~~ established the Florida Model Jail Standards Commission, a seven-member commission ~~five member working group~~ consisting of four ~~three~~ persons appointed by the Florida Sheriffs Association, three of whom must be currently elected sheriffs and one of whom must be a Florida licensed physician with at least 2 years of experience in correctional health care, and three ~~two~~ persons appointed by the Florida Association of Counties, of whom one must be a currently elected county commissioner, one must be an experienced jail administrator of a Florida county jail operated by a county, and one must be a Florida licensed psychiatrist with at least 2 years of experience in correctional psychiatry, to develop and maintain minimum model standards for county and municipal detention facilities. Every sheriff, county, city, or other entity that operates a municipal detention facility or a county detention facility ~~By October 1, 1996, each sheriff and chief correctional officer~~ shall adopt, at a minimum, the Florida Model Jail Standards approved by the commission with reference to all of the following:

1.a. The construction, equipping, maintenance, and operation of county and municipal detention facilities.

b. The cleanliness and sanitation of county and municipal detention facilities; the number of county and municipal prisoners who may be housed therein per specified unit of floor space; the quality, quantity, and supply of bedding furnished to

such prisoners; the quality, quantity, and diversity of food served to them and the manner in which it is served; the furnishing to them of medical attention and health and comfort items; and the disciplinary treatment which may be meted out to them.

Notwithstanding the provisions of the otherwise applicable building code, a reduced custody housing area may be occupied by inmates or may be used for sleeping purposes as allowed in subsection (7). The sheriff or chief correctional officer shall provide that a reduced custody housing area shall be governed by fire and life safety standards which do not interfere with the normal use of the facility and which affect a reasonable degree of compliance with rules of the State Fire Marshal for correctional facilities.

2. The confinement of prisoners by classification and providing, whenever possible, for classifications which separate males from females, juveniles from adults, and felons from misdemeanants, and ~~those awaiting trial from those convicted and~~, in addition, providing for the separation of special risk prisoners, such as the mentally ill, alcohol or narcotic addicts, sex deviates, suicide risks, and any other classification which the local unit may deem necessary for the safety of the prisoners and the operation of the facility pursuant to degree of risk and danger criteria. Nondangerous felons may be housed with misdemeanants. Special consideration must be given to the appropriate housing of pregnant women.

3. The additional jail standard requirements provided for under s. 951.2302.

Section 2. Section 951.2302, Florida Statutes, is created to read:

951.2302 Inspection of county and municipal detention facilities; penalties for noncompliance with jail standards.—

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

(a) "Commission" means the Florida Model Jail Standards Commission as provided in s. 951.23(4)(a).

(b) "County detention facility" has the same meaning as in s. 951.23.

(c) "Jail standards" means the Florida Model Jail Standards established by the commission, as set forth in s. 951.23(4)(a).

(d) "Municipal detention facility" has the same meaning as in s. 951.23.

(2) VIOLATIONS CRITERIA.—The jail standards must create and identify criteria and standards for which noncompliance with those provisions results in a serious violation or a notable violation.

(3) TYPE AND FREQUENCY OF INSPECTIONS.—The jail standards must require that each county detention facility and municipal detention facility be inspected, at a minimum, twice annually, as outlined in this section, for compliance with the jail standards. Each inspection must occur at least 120 days apart. A county detention facility or municipal detention facility may not refuse to be inspected or refuse access to the facility by commission inspectors. If any person in charge of a county detention facility or municipal detention facility refuses to allow inspection of the facility or to provide access to the facility, he or she shall be subject to the penalties in paragraph (5)(f).

(a) One of the annual inspections must be announced, with advance notice of the date on which the inspection will commence provided to the detention facility. The announced annual inspection must include an inspection of compliance with all jail standards.

(b) One of the annual inspections must be a limited, unannounced inspection, with no advance notice provided to the detention facility. The scope of the unannounced annual inspection must be limited to a review for serious violations.

(4) REINSPECTIONS.—

(a) If an announced or unannounced annual inspection finds a detention facility to be noncompliant with the jail standards for a notable violation, the facility must correct the noncompliance within 30 days and must be reinspected within 10 days after the 30-day correction period, or upon the facility notifying the commission that it has corrected its noncompliance, whichever is earlier. If upon reinspection the detention facility is still found to be noncompliant, the facility must correct the noncompliance within 15 days and must have a second reinspection within 48 hours thereafter. If the detention facility is found to be noncompliant during the second reinspection, the penalties and procedures set forth in paragraph (5)(e) shall apply. This paragraph does not prevent reinspection from occurring before the expiration of the timeframes stated in this paragraph if a detention facility notifies the commission that it has cured the noncompliance before the expiration of such timeframes.

(b) If an announced or unannounced annual inspection finds a detention facility to be noncompliant with the jail standards

for a serious violation, the facility must correct the noncompliance within 24 hours and must be reinspected within 48 hours after the violation was first observed. This paragraph does not prevent reinspection from occurring before the expiration of the 24-hour period if a detention facility notifies the commission that it has cured the noncompliance before such time. If the detention facility is found to be noncompliant during the reinspection, the penalties and procedures set forth in paragraph (5)(e) shall apply.

(5) PENALTIES FOR NONCOMPLIANCE WITH JAIL STANDARDS.—The following penalties shall apply to any person in charge of a detention facility who refuses to allow an inspection or to provide access to a facility, or to a detention facility that is found to be noncompliant with the jail standards during an annual inspection or any reinspection:

(a) If an annual inspection reveals that a detention facility is noncompliant with the jail standards for a notable violation and the noncompliance is corrected within the initial 30-day correction period, there is no penalty.

(b) If an annual inspection reveals that a detention facility is noncompliant with the jail standards for a notable violation, and the noncompliance is not corrected within the initial 30-day correction period, the facility must pay into the facility's inmate welfare fund the following specified amounts per day that the facility is not in compliance until the noncompliance has been corrected:

1. The 31st day through the 60th day: $500 per day of noncompliance.

2. The 61st day through the 90th day: $1,000 per day of

noncompliance.

3. The 91st day and all remaining days: $2,000 per day of noncompliance.

(c) If an annual inspection reveals that a detention facility is noncompliant with the jail standards for a serious violation, but the noncompliance is corrected within 24 hours after its discovery, there is no penalty.

(d) If an annual inspection reveals that a detention facility is noncompliant with the jail standards for a serious violation and the noncompliance is not corrected within 24 hours after its discovery, the facility must pay into the facility's inmate welfare fund $2,000 per day that the commission determines that the facility is noncompliant.

(e) In addition to the penalties set forth in paragraphs (b) and (d), if a second reinspection for a notable violation or a serious violation reveals that a detention facility is still noncompliant with the jail standards, the facility must cease its operations as a detention facility within 14 days and must contract with one or more other detention facilities to house the noncompliant facility's inmates until such time as the facility is determined to be in compliance with the jail standards. The receiving detention facility or facilities must be in compliance with the jail standards in order to house the noncompliant facility's inmates. However, if a detention facility consists of separate detention campuses, only the campus determined to be noncompliant with the jail standards must cease operations as stated in this paragraph. The 14-day time period shall commence upon the expiration of the appeal process specified in the jail standards, with the detention

facility failing to file a timely appeal, or upon the conclusion of the appeal process specified in the jail standards, resulting in a finding that the detention facility is noncompliant with the jail standards. The noncompliant detention facility is responsible for the costs accrued by another detention facility or facilities for housing the noncompliant facility's inmates. This paragraph may not be deemed to limit or prevent any other remedies or causes of action against a facility or an entity that operates a facility which may be brought under any other law, ordinance, or rule.

(f) If any person in charge of a county detention facility or municipal detention facility refuses to allow inspection of the facility or to provide access to the facility, such person's salary must be withheld for each day he or she refuses such inspection or access, and the amount withheld must be deposited into the facility's inmate welfare fund. This paragraph applies regardless of whether the person refusing to allow the inspection or refusing access to the detention facility is elected, appointed, or an employee of a county, a city, or any other political subdivision of this state.

Section 3. This act shall take effect July 1, 2022.

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/2022
Meeting Date

Rules
Committee

1236
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Dunagan **Phone** 850-877-2165

Address 2617 Mahan Drive **Email** mdunagan@flsheriffs.org
Street

Tallahassee FL 32308
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 Sheriffs Association

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

RULES
Committee

1236
Bill Number or Topic

Amendment Barcode (if applicable)

Name AARON WAYT, FL ASSN OF CRIM DEF LAWYERS Phone (407) 435-3194

Address _____ Email AARON@DONPUMPHREY.COM
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City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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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 1246
INTRODUCER:	Commerce and Tourism Committee and Senator Gruters
SUBJECT:	Benchmark Replacements for the London Interbank Offered Rate
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Favorable**
2.	Harmsen	McKay	CM	**Fav/CS**
3.	Arnold	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1246 provides for a transition to the Secured Overnight Financing Rate (SOFR) as the replacement rate for the London Interbank Offered Rate (LIBOR) for contracts and instruments that lack transition provisions. The bill provides for conforming changes to be made to the contract or instrument, voids fallback provisions based on LIBOR, and provides for construction of rights and duties under contracts affected by the bill.

The bill precludes liability, a claim, or a cause of action that arises out of, or is related to the selection or use of a recommended benchmark replacement, or to the determination, implementation, or performance of a benchmark replacement conforming change.

The bill provides a statement of overpowering public necessity for the bill and a statement of legislative finding that there are no alternative means to meet this public necessity.

Finally, the bill contains a statement of legislative intent which indicates that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

The bill takes effect upon becoming a law.

II. Present Situation:

Background on LIBOR

LIBOR is the reference rate at which large banks indicate that they can borrow short-term wholesale funds from one another on an unsecured basis in the interbank market.[1] The origins of LIBOR can be traced to a loan transaction in 1969 in which multiple banks were joint lenders (i.e., a syndicated loan) on a large loan of $80 million.[2] The interest rate of the loan was based on the weighted average of the funding costs for each of the participating banks plus a spread for profit.[3] The rate was recalculated periodically; hence, the rate was variable and reflected market conditions.[4] The idea caught on, and eventually nearly all syndicated loans used LIBOR to calculate the interest charged.[5] Soon the rate was adopted by bankers outside the loan market who were looking for an elegant proxy for bank borrowing costs that was simple, fair, and appeared to be independent.[6]

In addition to providing loans at rates tied to LIBOR, banks whose submissions determined the fixing of LIBOR had also begun to borrow heavily using LIBOR-based contracts by the mid-1980s, creating an incentive to underreport funding costs.[7] As a result, the British Bankers' Association (BBA) took control of the rate in 1986 to formalize the data collection and governance process.[8] In that year, LIBOR settings were calculated for the U.S. dollar, the British pound, and the Japanese yen.[9] Over time, the inclusion of additional currencies and integration of existing currencies into the euro left the BBA with oversight of settings for over ten currencies as of 2012.[10] Fifteen maturity terms were reported for each currency, ranging from overnight to a 1 year term.[11]

Today, LIBOR is calculated daily by the Intercontinental Exchange (ICE) Benchmark Administration.[12] Eighteen international banks submit rates that each bank believes it would pay, not what it actually pays, if it had to borrow money from another bank on the interbank lending market in London.[13] The four highest and four lowest submissions are then removed in order to calculate LIBOR.[14] Prior to the end of 2021, the ICE Benchmark Administration calculated the rate in five currencies (UK Pound Sterling, the Swiss Franc, the Euro, Japanese Yen, and the

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[1] David Hou and David Skeie, *LIBOR: Origins, Economics, Crisis, Scandal, and Reform, Federal Reserve Bank of New York Staff Reports* (March 2014), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr667.pdf (last visited Feb. 4, 2022).
[2] *Id* at 1.
[3] Gavin Finch and Liam Vaughan, *The Man Who Invented the World's Most Important Number* (November 29, 2016), https://www.bloomberg.com/news/features/2016-11-29/the-man-who-invented-libor-iw3fpmed (last visited Feb. 4, 2022).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] David Hou & David Skeie, *supra* note 1.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Miranda Marquit and Benjamin Curry, *What Is Libor And Why Is It Being Abandoned?*, Forbes (December 16, 2020), https://www.forbes.com/advisor/investing/what-is-libor/ (last visited Feb. 4, 2022).
[13] *Id.*
[14] *Id.*

U.S. Dollar), and LIBOR was produced in seven maturity terms or "tenors" (overnight/spot next, 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month).[15]

LIBOR has come under increasing scrutiny from regulators and financial markets alike following the 2008 financial crisis as well as documented patterns of manipulation by participating banks.[16] Others have noted the declining correlations between LIBOR and actual bank funding costs.[17] In 2017, the entity that regulates LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, stated that LIBOR would cease after the end of 2021.[18] However, most U.S. Dollar LIBOR tenors have been extended to the end of June 2023 to enable time for the market to transition away from LIBOR.[19] The 1-week and 2-month U.S. Dollar LIBOR ended at the end of 2021.[20] The FCA has recommended transitions to alternative rates before these dates.[21]

Adoption of the SOFR

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to address risks related to the U.S. Dollar LIBOR.[22] The ARRC's initial objectives were to identify risk-free alternative reference rates for the U.S. Dollar LIBOR, identify best practices for contract robustness, and create an implementation plan with metrics of success and a timeline to support an orderly adoption.[23] The ARRC was reconstituted in 2018 with an expanded membership to serve as a forum to coordinate planning across cash and derivatives products as well as market participants that currently use the U.S. Dollar LIBOR.[24] The ARRC is comprised of a diverse set of private-sector entities, each with an important presence in markets affected by the U.S. Dollar LIBOR, and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members.[25]

In 2017, the ARRC identified SOFR as its recommended alternative to the U.S. Dollar LIBOR.[26] SOFR is fully transaction-based and is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[27] SOFR is based on transaction data from three segments of the Treasury repurchase agreement market: (1) tri-party repurchase agreements, (2) General Collateral Finance repurchase agreements; and (3) bilateral repurchase agreement

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[15] *Id*.; Financial Conduct Authority, *About LIBOR Transition*, https://www.fca.org.uk/markets/libor-transition (last visited Feb. 4, 2022).
[16] Marquit and Curry, *supra* note 12.
[17] Bowman et al., *How Correlated is LIBOR with Bank Funding Costs?* (June 29, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm (last visited Feb. 4, 2022).
[18] Financial Conduct Authority, *supra* note 15.
[19] *Id*.
[20] *Id*.
[21] *Id*.
[22] Alternative Reference Rates Committee, *Frequently Asked Questions* (August 27, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf (last visited Feb. 4, 2022).
[23] *Id*.
[24] *Id*.
[25] Alternative Reference Rates Committee, *Alternative Reference Rates Committee: About*, https://www.newyorkfed.org/arrc (last visited Feb. 4, 2022).
[26] *Id*.
[27] *Id*.

transactions cleared through the Fixed Income Clearing Corporation.[28] The Federal Reserve Bank of New York currently publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.[29]

LIBOR Discontinuance

LIBOR has been used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.[30] The total exposure to the U.S. Dollar LIBOR, as of the fourth quarter of 2020, was $223 trillion.[31] Although the derivatives market accounts for a large majority of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products.[32]

Financial institutions and other market participants have been in the process of assessing their exposure to the discontinuation of LIBOR, and various financial regulators have discouraged the use of LIBOR as a reference rate in new contracts after December 31, 2021.[33] Some financial contracts that reference LIBOR include robust fallback language that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. While an estimated 67 percent of current LIBOR exposures will mature before LIBOR ceases at the end of June 2023, an estimated $74 trillion will remain outstanding.[34] This fact underscores the importance of finding solutions for legacy contracts, including legacy LIBOR contracts that have no provisions to replace LIBOR upon its cessation.[35] The ARRC posits that legislation is necessary to address those contracts.[36]

Recent Legislative Reforms

Federal Legislation

Similar to the bill, federal legislation (H.R. 4616) has been proposed that would provide for the transition of certain financial contracts away from LIBOR.[37] In the event a contract referencing LIBOR does not have a fallback or replacement rate provision in effect when LIBOR is retired, or a replacement rate is not selected by a determining person as defined by H.R. 4616, H.R. 4616

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[28] *Id*.
[29] *Id*.
[30] Marquit and Curry, *supra* note 12.
[31] Alternative Reference Rates Committee, *supra* note 22.
[32] *Id*.
[33] *See, e.g.*, U.S. Securities and Exchange Commission Office of Compliance Inspections and Examinations, *Risk Alert* (June 18, 2020), https://www.sec.gov/files/Risk%20Alert%20-%20OCIE%20LIBOR%20Initiative_1.pdf (last visited Feb. 4, 2022); Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (November 30, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf (last visited Feb. 4, 2022); Rohit Chopra, *Joint Statement on Managing the LIBOR Transition* (Oct. 20, 2021), https://www.consumerfinance.gov/about-us/newsroom/joint-statement-on-managing-the-libor-transition/#note5 (last visited Feb. 4, 2022).
[34] Alternative Reference Rates Committee, *supra* note 22.
[35] *Id*.
[36] *Id*.
[37] Adjustable Interest Rate (LIBOR) Act of 2021, H.R. 4616, 117th Cong., https://www.congress.gov/bill/117th-congress/house-bill/4616/text (last visited Feb. 4, 2022).

provides for a transition to SOFR as the replacement rate.[38] H.R. 4616 also provides for conforming changes to these contracts, the continuity and enforceability of these contracts, and protections against liability as a result of such a transition.[39] H.R. 4616 passed the House but has not yet been acted upon in the Senate.[40]

State Legislation

New York[41] and Alabama[42] have passed similar legislation.

III. Effect of Proposed Changes:

Section 1 creates s. 687.15, F.S., "Benchmark Replacements for the London Interbank Offered Rate," which provides for the transition to the Secured Overnight Financing Rate (SOFR) as the replacement rate for LIBOR for contracts and instruments that lack applicable transition provisions.

The bill provides the following legislative finding:

> The Legislature finds that the discontinuation of (LIBOR)[43] as a viable interest rate threatens the continued viability of certain contracts, securities, and instruments and the rights of the parties to those contracts, securities, or instruments. Furthermore, the threat of unknown and potentially unbounded liability and the viability of contracts, securities, and instruments threatens the state's economy and has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for parties to certain contracts, securities, or instruments, as provided in [the bill], to enjoy heightened legal protections as a result of the discontinuation of LIBOR. The Legislature also finds that there are no alternative means to meet this public necessity. The Legislature finds that the public interest as a whole is best served by providing certainty to these contracts, securities, and instruments and the parties thereto, so that these contracts, securities, and instruments may remain viable and continue to be enforceable in the state.

[38] *Id*.
[39] *Id*.
[40] *Id*.
[41] *See* NY Assembly Bill 164B, https://www.nysenate.gov/legislation/bills/2021/S297, (last visited Feb. 4, 2022).
[42] Financial transactions, Senate Bill 279, https://legiscan.com/AL/text/SB279/id/2379813 (last visited Feb. 4, 2022).
[43] "LIBOR" means, for purposes of the application of the bill to any particular contract, security, or instrument, the United States Dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination of benchmark rates.

Under the bill, various LIBOR discontinuance events[44] trigger a LIBOR replacement date[45] for a contract, security, or instrument[46] that uses LIBOR as a benchmark,[47] if the contract, security, or instrument also:

- Does not contain a fallback provision;[48] or
- Contains fallback provisions resulting in a benchmark replacement[49] that is based in any way on a LIBOR value.

These specific contracts, securities, and instruments that rely on LIBOR will, by operation of law on the LIBOR replacement date, replace LIBOR with the recommended benchmark replacement.

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[44] "LIBOR discontinuance event" means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

b. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the Federal Reserve System, an insolvency official with jurisdiction over the administrator of LIBOR, a resolution authority with jurisdiction over the administrator of LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator of LIBOR, announcing that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

c. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

A public statement or publication of information that affects one or more tenors of LIBOR does not constitute a LIBOR discontinuance event with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

[45] "LIBOR replacement date" means:

a. In the case of a LIBOR discontinuance event described in a. or b. (*supra* note 44), the later of:

(I) The date of the public statement or publication of information referenced in a. or b. (*supra* note 44); or

(II) The date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR.

b. In the case of a LIBOR discontinuance event described in c. (*supra* note 44), the date of the public statement or publication of information referenced in c. (*supra* note 44).

2. A date that affects one or more tenors of LIBOR does not constitute a LIBOR replacement date with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

[46] "Contract, security, or instrument" includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, instrument, obligation, or security, whether representing debt or equity, and including any interest in a corporation, partnership, or limited liability company.

[47] "Benchmark" means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or with respect to a contract, security, or instrument.

[48] "Fallback provision" means a term in a contract, security, or instrument which sets forth a methodology or procedure for determining a benchmark replacement, including any term relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with the methodology or procedure.

[49] "Benchmark replacement" means a benchmark, an interest rate, or a dividend rate that may or may not be based, in whole or in part, on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a contract, security, or instrument.

The recommended benchmark is a benchmark replacement based on SOFR[50], which must include any recommended spread adjustment,[51] and any benchmark replacement conforming change[52] that has been selected or recommended by a relevant recommending body[53] with respect to the type of contract, security, or instrument.

After a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument that provides for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.

For any contract, security, or instrument that uses LIBOR as a benchmark and that contains fallback provisions that allow or require the selection of a benchmark replacement that is based in any way on a LIBOR value or a benchmark replacement that is similar to LIBOR, a determining person[54] may select the recommended benchmark replacement as the benchmark replacement after the occurrence of a LIBOR discontinuance event. In such case, the selection of the recommended benchmark replacement must be:

- Irrevocable;

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[50] "SOFR" means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York's website.

[51] "Recommended spread adjustment" means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement. This term may be a positive or negative value or zero.

[52] "Benchmark replacement conforming change" means, with respect to any type of contract, security, or instrument, a technical, administrative, or operational change, alteration, or modification that is associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that has been selected or recommended by a relevant recommending body. However, if, in the reasonable judgment of a calculating person, the change, alteration, or modification selected or recommended by a relevant recommending body does not apply to the contract, security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change may include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

1. Are necessary to allow administration and calculation of the recommended benchmark replacement under or with respect to the contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent practicable, the manner in which the contract, security, or instrument was administered immediately before the LIBOR replacement date.

2. Would not result in a disposition of the contract, security, or instrument for federal income tax purposes.

"Calculating person" means, with respect to any contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark. This person may be the determining person. See *infra* note 54 for the definition of "determining person".

[53] "Relevant recommending body" means the Federal Reserve Board, the Federal Reserve Bank of New York, the ARRC, or a successor to any of these.

[54] "Determining person" means, with respect to any contract, security, or instrument, the following persons in decreasing order of priority:

1. A person so specified.

2. A person with the authority, right, or obligation to do any of the following:

a. Determine the benchmark replacement that will take effect on the LIBOR replacement date.

b. Calculate or determine a valuation, payment, or other measurement based on a benchmark.

c. Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement.

- Made by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and
- Used in any determination of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

If a recommended benchmark replacement becomes the benchmark replacement for a contract, security, or instrument under the bill, then all benchmark replacement conforming changes that are applicable to the recommended benchmark replacement must become an integral part of the contract, security, or instrument by operation of law.

The selection or use of a recommended benchmark replacement as a benchmark replacement under or with respect to a contract, security, or instrument, by operation of the bill, constitutes:

- A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR.
- A reasonable, comparable, or analogous term for LIBOR under or with respect to the contract, security, or instrument.
- A replacement that is based on a methodology or information that is similar or comparable to LIBOR.
- Substantial performance by any person of any right or obligation relating to or based on LIBOR under or with respect to a contract, security, or instrument.

A LIBOR discontinuance event, a LIBOR replacement date, the selection or use of a recommended benchmark replacement as a benchmark replacement, or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill, may not:

- Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;
- Have the effect of discharging or excusing performance under a contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in a contract, security, or instrument;
- Have the effect of giving any person the right to unilaterally terminate or suspend performance under a contract, security, or instrument;
- Have the effect of constituting a breach of a contract, security, or instrument; or
- Have the effect of voiding or nullifying a contract, security, or instrument.

A person is not liable for damages to any other person, and is not subject to any claim or request for equitable relief, that arises out of, or is related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill. The selection or use of the recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change may not give rise to any claim or cause of action by any person in law or in equity.

The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, by operation of the bill, may not be deemed to:

- Be an amendment or modification of a contract, security, or instrument.
- Prejudice, impair, or affect a person's rights, interests, or obligations under or with respect to a contract, security, or instrument.

Except as otherwise provided in the bill, the bill may not be interpreted as creating a negative inference or negative presumption regarding the validity or enforceability of any of the following:

- A benchmark replacement that is not a recommended benchmark replacement.
- A spread adjustment, or method for calculating or determining a spread adjustment, which is not a recommended spread adjustment.
- A change, alteration, or modification to or with respect to a contract, security, or instrument which is not a benchmark replacement conforming change.

The bill does not alter or impair any of the following:

- A written agreement by all required parties which, retrospectively or prospectively, provides that a contract, security, or instrument is not subject to the bill without necessarily referring specifically to the statute created by the bill.
- A contract, security, or instrument that contains fallback provisions that would result in a benchmark replacement that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.
- A contract, security, or instrument as to which a determining person does not elect to use a recommended benchmark replacement or as to which a determining person elects to use a recommended benchmark replacement before the occurrence of a LIBOR discontinuance event. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.
- The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

Notwithstanding the Uniform Commercial Code[55] or any other law of this state, and except as otherwise provided in the bill, the bill applies to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and may not be superseded by any other law of this state.

Section 2 provides that the provisions of the bill are remedial in nature and apply retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or

[55] Chapters 670-680, F.S., comprise the Uniform Commercial Code. Section 671.101, F.S.

securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Impairment of Contracts and Due Process

Both the Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.[56] However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, applies retroactively in certain situations.[57] In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.[58] A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[59] However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.[60] Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so "would attach new legal consequences to events completed before its enactment."[61]

[56] U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.
[57] U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.
[58] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[59] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[60] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).
[61] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.[62] The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.[63]

For certain contracts and instruments, the bill provides for a transition to SOFR as the replacement rate for LIBOR, provides for conforming changes to be made to the contract or instrument, voids fallback provisions that are based on LIBOR, and provides for construction of rights and duties under contracts affected by the bill. Additionally, the bill contains a statement of legislative intent indicating that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021. Whether the Legislature's retroactive modification of such contracts and instruments is procedural, remedial, or substantive, and whether such modification implicates the constitutional right to contract or the constitutional right to due process, is for the courts to decide.

Retroactive Application of Law and Expression of Remedial Nature

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.[64] When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute is remedial in nature so as to require application to cases that were pending at the time the statute went into effect. Generally, "the presumption applied to procedural and remedial statutes is that they are to apply to pending cases."[65] Conversely, a law that affects substantive rights by creating substantive new rights or imposing new legal burdens is presumed to apply prospectively.[66]

In a recent Florida Supreme Court case, the Court acknowledged that "[t]he distinction between substantive and procedural (remedial) law is neither simple nor certain."[67] The

[62] U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.
[63] *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); s*ee, e.g., Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).
[64] *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977). *See also, Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994). However, "[j]ust because the Legislature labels something as being remedial, however, does not make it so." *See, e.g., State v. Smith*, 547 So2d 613 (Fla. 1989); *State, Dep't of Transp. v. Knowles*, 402 So.2d 1155 (Fla. 1981).
[65] *Love* at 181, *citing Arrow Air, Inc. v. Walsh*, 645 So.2d 422, 424 (Fla. 1994).
[66] *Arrow Air, Inc.*, at 424.
[67] *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle's Design-Build, Inc*., 753 So. 2d 49, 53 (Fa. 2000).

Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.[68]

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.[69] Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.[70]

Access to Courts

In *Kluger v. White*,[71] the Florida Supreme Court evaluated to what extent the Legislature may alter a civil cause of action. The Court stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim . . . ." The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.[72]
- Abolish a cause of action that is not "traditional and long-standing" – that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.[73]
- Abolish a cause of action if the Legislature either:
  - Provides a reasonable commensurate benefit in exchange;[74] or
  - Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."[75]

The bill precludes liability, a claim, or a cause of action arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change. The bill also provides a statement demonstrating the overpowering public necessity for the bill and a finding that there are no alternative means to meet this public necessity.

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[68] *Love* at 184.
[69] *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.,* 869 So. 2d 1210 (Fla 2004).
[70] *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).
[71] *Kluger*, 281 So. 2d 1 (Fla. 1973).
[72] *See Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).
[73] *See Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); *see also Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity . . .").
[74] *Kluger*, 281 So. 2d at 4; *see Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); *accord Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); *but see Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down noneconomic cap on damages, which, although not wholly abolishing a cause of action, did not provide a commensurate benefit).
[75] *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); *see Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill changes terms of certain contracts by the effect of law. This may make the effectuation of these contracts more efficient, as the LIBOR benchmark is being discontinued.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 687.15 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 Commerce and Tourism on February 7, 2022:

- Clarifies the definition of a "benchmark replacement conforming change" to allow, but not require, additional changes to a contract, security, or instrument if the changes selected or recommended by the relevant recommending body are insufficient to allow for the administration and calculation of the recommended benchmark replacement; and
- Replaces the undefined term "recommended replacement benchmark" with the defined "recommended benchmark replacement."

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Gruters

577-02788-22 20221246c1

A bill to be entitled

An act relating to benchmark replacements for the London Interbank Offered Rate; creating s. 687.15, F.S.; providing legislative findings and intent and a statement of public interest; providing definitions; requiring that recommended benchmark replacements selected or recommended by specified persons be benchmark replacements on the United States dollar London Interbank Offered Rate (LIBOR) replacement date for certain contracts, securities, and instruments; requiring certain fallback provisions in contracts, securities, and instruments providing specified benchmark replacements to be disregarded and void; authorizing specified persons to select benchmark replacements under certain circumstances; providing requirements for such selection; providing applicability; requiring benchmark replacement conforming changes to become an integral part of contracts, securities, and instruments under certain circumstances; providing construction; providing that a person is not liable for damages and is not subject to claims and requests for equitable relief under certain circumstances; providing applicability; prohibiting other laws from superseding specified provisions; providing that the act is remedial in nature; providing retroactive applicability; providing an effective date.

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

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577-02788-22 20221246c1

Section 1. Section 687.15, Florida Statutes, is created to read:

687.15 Benchmark replacements for the London Interbank Offered Rate.—

(1) The Legislature finds that the discontinuation of the London Interbank Offered Rate (LIBOR) as a viable interest rate threatens the continued viability of certain contracts, securities, and instruments and the rights of the parties to those contracts, securities, or instruments. Furthermore, the threat of unknown and potentially unbounded liability and the viability of contracts, securities, and instruments threatens the state's economy and has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for parties to certain contracts, securities, or instruments, as provided in this section, to enjoy heightened legal protections as a result of the discontinuation of LIBOR. The Legislature also finds that there are no alternative means to meet this public necessity. The Legislature finds that the public interest as a whole is best served by providing certainty to these contracts, securities, and instruments and the parties thereto, so that these contracts, securities, and instruments may remain viable and continue to be enforceable in the state.

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

(a) "Benchmark" means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or with respect

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to a contract, security, or instrument.

(b) "Benchmark replacement" means a benchmark, an interest rate, or a dividend rate that may or may not be based, in whole or in part, on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a contract, security, or instrument.

(c) "Benchmark replacement conforming change" means, with respect to any type of contract, security, or instrument, a technical, administrative, or operational change, alteration, or modification that is associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that has been selected or recommended by a relevant recommending body. However, if, in the reasonable judgment of a calculating person, the change, alteration, or modification selected or recommended by a relevant recommending body does not apply to the contract, security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change may include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

1. Are necessary to allow administration and calculation of the recommended benchmark replacement under or with respect to the contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent practicable, the manner in which the contract, security, or instrument was administered immediately before the LIBOR replacement date.

2. Would not result in a disposition of the contract, security, or instrument for federal income tax purposes.

(d) "Calculating person" means, with respect to any contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark. This person may be the determining person.

(e) "Contract, security, or instrument" includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, instrument, obligation, or security, whether representing debt or equity, and including any interest in a corporation, partnership, or limited liability company.

(f) "Determining person" means, with respect to any contract, security, or instrument, the following persons in decreasing order of priority:

1. A person so specified.

2. A person with the authority, right, or obligation to do any of the following:

a. Determine the benchmark replacement that will take effect on the LIBOR replacement date.

b. Calculate or determine a valuation, payment, or other measurement based on a benchmark.

c. Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement.

(g) "Fallback provision" means a term in a contract, security, or instrument which sets forth a methodology or procedure for determining a benchmark replacement, including any term relating to the date on which the benchmark replacement

becomes effective, without regard to whether a benchmark replacement can be determined in accordance with the methodology or procedure.

(h) "LIBOR" means, for purposes of the application of this section to any particular contract, security, or instrument, the United States dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination of benchmark rates.

(i)1. "LIBOR discontinuance event" means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

b. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the Federal Reserve System, an insolvency official with jurisdiction over the administrator of LIBOR, a resolution authority with jurisdiction over the administrator of LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator of LIBOR, announcing that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

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c. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

2. A public statement or publication of information that affects one or more tenors of LIBOR does not constitute a LIBOR discontinuance event with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

(j)1. "LIBOR replacement date" means:

a. In the case of a LIBOR discontinuance event described in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later of:

(I) The date of the public statement or publication of information referenced in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b.; or

(II) The date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR.

b. In the case of a LIBOR discontinuance event described in sub-subparagraph (i)1.c., the date of the public statement or publication of information referenced in sub-subparagraph (i)1.c.

2. A date that affects one or more tenors of LIBOR does not constitute a LIBOR replacement date with respect to a contract,

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security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

(k) "Recommended benchmark replacement" means, with respect to any particular type of contract, security, or instrument, a benchmark replacement based on SOFR that must include any recommended spread adjustment and any benchmark replacement conforming change that have been selected or recommended by a relevant recommending body with respect to the type of contract, security, or instrument.

(l) "Recommended spread adjustment" means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement. This term may be a positive or negative value or zero.

(m) "Relevant recommending body" means the Federal Reserve Board, the Federal Reserve Bank of New York, the Alternative Reference Rates Committee, or a successor to any of them.

(n) "SOFR" means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark,

or a successor administrator, on the Federal Reserve Bank of New York's website.

(3) On the LIBOR replacement date, the recommended benchmark replacement, by operation of law, shall be the benchmark replacement for a contract, security, or instrument that uses LIBOR as a benchmark and that:

(a) Does not contain a fallback provision; or

(b) Contains fallback provisions resulting in a benchmark replacement, other than a recommended benchmark replacement, that is based in any way on a LIBOR value.

(4) After the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR shall be void and of no force or effect.

(5)(a) A determining person may, but is not required to, select the recommended benchmark replacement as the benchmark replacement after the occurrence of a LIBOR discontinuance event. The selection of the recommended benchmark replacement must be:

1. Irrevocable;

2. Made by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and

3. Used in any determination of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

(b) Paragraph (a) applies to a contract, security, or instrument that uses LIBOR as a benchmark and that contains fallback provisions allowing or requiring the selection of a benchmark replacement that is:

1. Based in any way on a LIBOR value; or

2. The substantive equivalent of paragraph (7)(a), paragraph (7)(b), or paragraph (7)(c).

(6) If a recommended benchmark replacement becomes the benchmark replacement for a contract, security, or instrument under this section, then all benchmark replacement conforming changes that are applicable to the recommended benchmark replacement must become an integral part of the contract, security, or instrument by operation of law.

(7) The selection or use of a recommended benchmark replacement as a benchmark replacement under or with respect to a contract, security, or instrument by operation of this section constitutes all of the following:

(a) A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR.

(b) A reasonable, comparable, or analogous term for LIBOR under or with respect to the contract, security, or instrument.

(c) A replacement that is based on a methodology or information that is similar or comparable to LIBOR.

(d) Substantial performance by any person of any right or obligation relating to or based on LIBOR under or with respect to a contract, security, or instrument.

(8) A LIBOR discontinuance event, a LIBOR replacement date, the selection or use of a recommended benchmark replacement as a benchmark replacement, or the determination, implementation, or

performance of a benchmark replacement conforming change, in each case, by operation of this section, may not:

(a) Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;

(b) Have the effect of discharging or excusing performance under a contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in a contract, security, or instrument;

(c) Have the effect of giving any person the right to unilaterally terminate or suspend performance under a contract, security, or instrument;

(d) Have the effect of constituting a breach of a contract, security, or instrument; or

(e) Have the effect of voiding or nullifying a contract, security, or instrument.

(9) A person is not liable for damages to any other person, and is not subject to any claim or request for equitable relief, arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of this section. The selection or use of the recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change may not give rise to any claim or cause of action by any person in law or in equity.

(10) The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, by operation of

this section, may not be deemed to:

(a) Be an amendment or modification of a contract, security, or instrument.

(b) Prejudice, impair, or affect a person's rights, interests, or obligations under or with respect to a contract, security, or instrument.

(11) Except as provided in subsection (3) or subsection (5), this section may not be interpreted as creating a negative inference or negative presumption regarding the validity or enforceability of any of the following:

(a) A benchmark replacement that is not a recommended benchmark replacement.

(b) A spread adjustment, or method for calculating or determining a spread adjustment, which is not a recommended spread adjustment.

(c) A change, alteration, or modification to or with respect to a contract, security, or instrument which is not a benchmark replacement conforming change.

(12) This section does not alter or impair any of the following:

(a) A written agreement by all requisite parties which, retrospectively or prospectively, provides that a contract, security, or instrument is not subject to this section without necessarily referring specifically to this section. As used in this paragraph, the term "requisite parties" means all parties required to amend the terms and provisions of a contract, security, or instrument that would otherwise be altered or affected by this section.

(b) A contract, security, or instrument that contains

fallback provisions that would result in a benchmark replacement that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate. However, the contract, security, or instrument is subject to subsection (4).

(c) A contract, security, or instrument subject to subsection (5) as to which a determining person does not elect to use a recommended benchmark replacement or as to which a determining person elects to use a recommended benchmark replacement before the occurrence of a LIBOR discontinuance event. However, the contract, security, or instrument is subject to subsection (4).

(d) The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

(13) Notwithstanding the Uniform Commercial Code or any other law of this state, and except as otherwise provided in this section, this section applies to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and may not be superseded by any other law of this state.

Section 2. This act is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

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

The Florida Senate

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2/15/22
Meeting Date

Rules
Committee

1246
Bill Number or Topic

Amendment Barcode (if applicable)

Name Anthony DiMarco

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Tallahassee FL 32303
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☒ I am a registered lobbyist, representing: FL Bankers Association.

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

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1258
INTRODUCER:	Senator Jones
SUBJECT:	Managed Care Plan Performance
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Favorable**
2.	Johnson	Knudson	BI	**Favorable**
3.	Smith	Phelps	RC	**Favorable**

I. Summary:

SB 1258 statutorily requires managed care plans contracting with the Agency for Health Care Administration (AHCA) under the Statewide Medicaid Managed Care (SMMC) program to collect and annually report an expanded set of performance measures, including Healthcare Effectiveness Data and Information Set (HEDIS) measures, the federal Core Set of Children's Health Care Quality measures, and the federal Core Set of Adult Health Care Quality performance measures, as specified by the AHCA. For calendar year 2020, the plans were required to report 27 HEDIS measures related to medical care and nine measures related to Child and Adult Core Set measures.

Beginning in calendar year 2025, the bill requires each managed care plan to collect and report all of the Adult Core Set behavioral health measures, which are not currently required to be reported. Beginning in calendar year 2026, the bill requires each managed care plan to stratify all performance measure data by recipient age, race, ethnicity, primary language, sex, and disability status.

The bill will have a moderate operational and fiscal impact on the Florida Medicaid Program. Implementation of the bill will require one additional FTE at the AHCA. The total cost to the AHCA for the additional FTE is $79,930, which includes non-recurring expenditures, salary, and benefits for the position. The cost of the additional FTE is funded by the Medical Care Trust Fund. The state's portion of the total cost is $39,965.

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

II. Present Situation:

Florida Medicaid Program

The AHCA is responsible for the administration of the Florida Medicaid program, authorized under Title XIX of the Social Security Act.[1] This authority includes establishing and maintaining a Medicaid state plan approved by the Centers for Medicare & Medicaid Services (CMS) and maintaining any Medicaid waivers needed to operate the Florida Medicaid program as directed by the Legislature.[2]

Florida Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service (FFS) or managed care. Under FFS, the state Medicaid program pays health care providers for each service provided to a Medicaid enrollee. In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the SMMC program. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

Managed Care Plan Performance Measure Reporting

The AHCA monitors contracted manage care plan performance through a combination of performance measures developed by the National Committee for Quality Assurance (NCQA), the federal CMS, and the AHCA itself.[3]

The NCQA develops the HEDIS as a standardized tool to measure the performance of health plans. More than 90 percent of health plans in America use the HEDIS tool to measure performance on important dimensions of care and service, making it convenient to compare plan performance.[4] Current law requires managed care plans participating in the SMMC program to collect and report HEDIS measures specified by the AHCA on an annual basis and to post the information its website in a manner that allows recipients to compare the performance of available plans.[5]

For calendar year 2020, the managed care plans were required to report 27 HEDIS measures related to medical care and nine Child and Adult Core Set measures, a total of 36 measures.[6] Many of these measures include sub-measures. The total number of performance measure rates, or lines of data that must currently be reported for the measures and sub-measures is 192.[7]

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[1] Section 409.902, F.S.
[2] Medicaid.gov, *Medicaid State Plan Amendments, available at* https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html (last visited Feb. 4, 2022).
[3] Agency for Health Care Administration, Performance Measure Data Submissions for Medicaid, https://ahca.myflorida.com/medicaid/quality_mc/submission.shtml (last visited Feb. 4, 2022).
[4] U.S. Department of Health and Human Services, Healthcare Effectiveness Data and Information Set, https://www.healthypeople.gov/2020/data-source/healthcare-effectiveness-data-and-information-set (last visited Feb. 4, 2022).
[5] Section 409.967(2)(f)2., F.S.
[6] Agency for Health Care Administration, Agency Analysis of HB 855, Dec. 16, 2021 (on file with Committee on Banking and Insurance).
[7] *Id.*

Each managed care plan operates in at least one region of the state and several managed care plans operate in all 11 regions. For calendar year 2020 performance measure reporting (which occurred in 2021), the AHCA required managed care plans to provide regional breakouts in addition to the statewide rates for most of the HEDIS and Child and Adult Core Set measures that it currently requires plans to report.[8] The AHCA required the regional stratifications to identify potential differences in plan performance by region and to better target areas where improvement may be needed.[9]

- For plans operating in only one region, the base number of 192 performance measure rates, or lines of data, were required to be reported since the plan's statewide and regional results are the same.
- For a plan operating in two regions of the state, the base number of 192 performance measure rates is multiplied by three, as the plan will be reporting a statewide rate and separate rates for each of the two regions. In this case, 576 performance measure rates were required to be reported.

  For a plan operating in all 11 regions of the state, the base number of 192 performance measure rates is multiplied by 12, as the plan will be reporting a statewide rate and separate rates for each of the 11 regions. In this case, 2,304 performance measure rates were required to be reported.[10]

III. Effect of Proposed Changes:

The bill amends s. 409.967(2)(f), F.S., to require managed care plans to collect and annually report HEDIS measures, the federal Core Set of Children's Health Care Quality measures, and the federal Core Set of Adult Health Care Quality performance measures, as specified by the AHCA. Section 409.967(2)(f), F.S., currently requires managed care plans to collect and annually report HEDIS measures. The AHCA currently requires plans participating in the MMA program to report a selection of 27 HEDIS measures related to medical care and nine measures related to Child and Adult Core Set measures in its contracts with those plans.[11]

The bill requires each plan to collect and report the Adult Core Set behavioral health measures, which are not currently required by statute to be reported, beginning with data reports for the 2025 calendar year. Each plan must stratify reported measures by age, sex, race, ethnicity, primary language, and whether the enrollee received a Social Security Administration determination of disability for purposes of Supplemental Security Income, beginning with data reports for the 2026 calendar year. The bill requires each managed care plan to post all these measures, and the corresponding stratified data, to the plan's website.

Although the managed care plans have recently added regional and race and ethnicity stratifications to several of the measures they reported on this year, this bill will require them to add race and ethnicity stratifications to all measures, and add stratifications in four additional areas (age, sex, primary language, and disability status) to all AHCA-required measures.[12]

[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*

The bill updates a reference to the "HEDIS" data set, which was formerly referred to as "Health Plan Employer Data and Information Set" but is now referred to by the NCQA as the "Healthcare Effectiveness Data and Information Set."

The bill also corrects a grammatical error in current law by changing "s." to its plural form "ss."

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:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will provide additional measures that can be used to evaluate and compare the performance of plans.

Effective for data reports for beginning in calendar years 2025 and 2026, the bill increases the stratifications and the volume of performance measure rates to be calculated, audited, and reported. The AHCA reports that this will result in increased operational and administrative costs for the managed care plans due to increased workload for the plans and increased costs for the plans' contracted NCQA-certified auditors and NCQA-certified HEDIS software vendors.[13]

[13] *Id.*

C. Government Sector Impact[14]:

The changes required by this bill would not need to be implemented until calendar year 2025. As such, the current Statewide Medicaid Managed Care (SMMC) contracts would not be affected and would not require an amendment. However, these requirements and would need to be included in the next procurement and in the rates for the next contracts. The exact fiscal impact to the plans and thus, to the rates, is unknown at this time.

SB 1258 poses a moderate operational and fiscal impact on the Florida Medicaid Program. The AHCA reports that the requirements of the bill will increase staff workload and will require one additional FTE. The total cost to the AHCA for the additional FTE is $79,930. This amount includes non-recurring expenditures, salary, and benefits for the position. The Medical Care Trust Fund funds the cost of the additional FTE. The state's portion of the total cost is $39,965.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.967 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[14] *Id.*

By Senator Jones

35-01313A-22 20221258__

A bill to be entitled

An act relating to managed care plan performance; amending s. 409.967, F.S.; requiring managed care plans to collect and report specified measures beginning with a certain data reporting period; requiring plans to stratify reported measures by specified categories beginning with a certain data reporting period; requiring a plan's performance to be published on its website in a specified manner; requiring the Agency for Health Care Administration to use the measures to monitor plan performance; providing an effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 409.967, Florida Statutes, is amended to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(f) *Continuous improvement.*—The agency shall establish specific performance standards and expected milestones or timelines for improving performance over the term of the contract.

1. Each managed care plan shall establish an internal health care quality improvement system, including enrollee satisfaction and disenrollment surveys. The quality improvement

35-01313A-22 20221258__

system must include incentives and disincentives for network providers.

2. Each managed care plan must collect and report the Healthcare Effectiveness ~~Health Plan Employer~~ Data and Information Set (HEDIS) measures, the federal Core Set of Children's Health Care Quality Measures, and the federal Core Set of Adult Health Care Quality Measures, as specified by the agency. Each plan must collect and report the Adult Core Set behavioral health measures beginning with data reports for the 2025 calendar year. Each plan must stratify reported measures by age, sex, race, ethnicity, primary language, and whether the enrollee received a Social Security Administration determination of disability for purposes of Supplemental Security Income beginning with data reports for the 2026 calendar year. A plan's performance on these measures must be published on the plan's website in a manner that allows recipients to reliably compare the performance of plans. The agency shall use the ~~HEDIS~~ measures as a tool to monitor plan performance.

3. Each managed care plan must be accredited by the National Committee for Quality Assurance, the Joint Commission, or another nationally recognized accrediting body, or have initiated the accreditation process, within 1 year after the contract is executed. For any plan not accredited within 18 months after executing the contract, the agency shall suspend automatic assignment under ss. 409.977 and 409.984 ~~s. 409.977 and 409.984~~.

4. By the end of the fourth year of the first contract term, the agency shall issue a request for information to determine whether cost savings could be achieved by contracting

for plan oversight and monitoring, including analysis of encounter data, assessment of performance measures, and compliance with other contractual requirements.

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

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

The Florida Senate

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2.15.22
Meeting Date

Rules
Committee

1258
Bill Number or Topic

Amendment Barcode (if applicable)

Name Holly Bullard Florida Policy Institute

Phone 850 257 3460

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Street

Email

Tall FL 32301
City State Zip

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

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S-001 (08/10/2021)

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02/15/2022
Meeting Date

Rules
Committee

SB 1258
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ivonne Fernandez - AARP

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Tallahassee FL
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

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☑ I am a registered lobbyist, representing:
AARP

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

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1326
INTRODUCER:	Community Affairs Committee and Senator Rodriguez and others
SUBJECT:	Comprehensive Review Study of the Central and Southern Florida Project
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Rogers	EN	**Favorable**
2.	Hunter	Ryon	CA	**Fav/CS**
3.	Collazo	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1326 amends s. 373.1501, F.S., to require the South Florida Water Management District (SFWMD) to prepare and submit a consolidated annual report regarding the status of the United States Army Corps of Engineers' (USACE) Section 216 Central and Southern Florida Project infrastructure resiliency study to the Office of Economic and Demographic Research, the Department of Environmental Protection (DEP), the Governor, and the Legislature. The required report must include:

- A summary of the findings in the SFWMD's annual sea level rise and flood resiliency plan;
- A list of structures that are expected to fall below the expected service level in the next 5 years;
- Initial recommendations for the refurbishment or replacement of the structures identified in the preceding bullet; and
- A summary of the state and federal funds expended toward the implementation of the USACE infrastructure resiliency study and other regional resiliency efforts of the SFWMD through June 30 of each year.

II. Preset Situation:

Central and Southern Florida Project (C&SF Project)

In 1948, Congress authorized the Central and Southern Florida Project (C&SF Project).[1] The purposes of the project included flood control, regional water supply, prevention of saltwater intrusion, water supply to Everglades National Park, wildlife preservation, recreation, and navigation.[2] To achieve these purposes, in a partnership between the U.S. Army Corps of Engineers and the state, the C&SF Project developed a water management system that includes 1,000 miles each of levees and canals, 150 water control structures, and 16 major pump stations.[3] The project involves an area of about 16,000 square miles, which includes all or part of 18 counties in central and southern Florida.[4] Major features of the C&SF Project include:

- An East Coast Protective Levee extending from the Homestead area north to the eastern shore of Lake Okeechobee near St. Lucie Canal;
- Three conservation areas for water impoundment in the Everglades area west of the East Coast Protective Levee, with control structures to effect transfer of water as necessary;
- Local protection works along the lower east coast;
- Encirclement of the Lake Okeechobee agricultural area by levees and canals;
- Enlargement of portions of Miami, North New River, Hillsboro, and West Palm Beach canals;
- Enlargement of existing Lake Okeechobee levees and construction of new levees on the northeast and northwest shores of the lake;
- Increased outlet capacity for improved control of Lake Okeechobee;
- Floodway channels in the Kissimmee River Basin, with suitable control structures to prevent over drainage;
- An interrelated system of canals, levees, pumping stations and structures in the southwest Miami-Dade County to control water levels; and
- Facilities for risk management of floods in the upper St. Johns River Basin.[5]

Among other things, the C&SF Project provides water control and protection from the recurrence of flood waters for the highly developed urban area along the lower east coast of Florida, for the agricultural areas around Lake Okeechobee, in the Upper St. Johns and Kissimmee River Basin, and in south Miami-Dade County.[6]

USACE operates and maintains project works on the St. Lucie Canal, Caloosahatchee River, Lake Okeechobee levees, channels, and major spillways, and the main outlets for Water

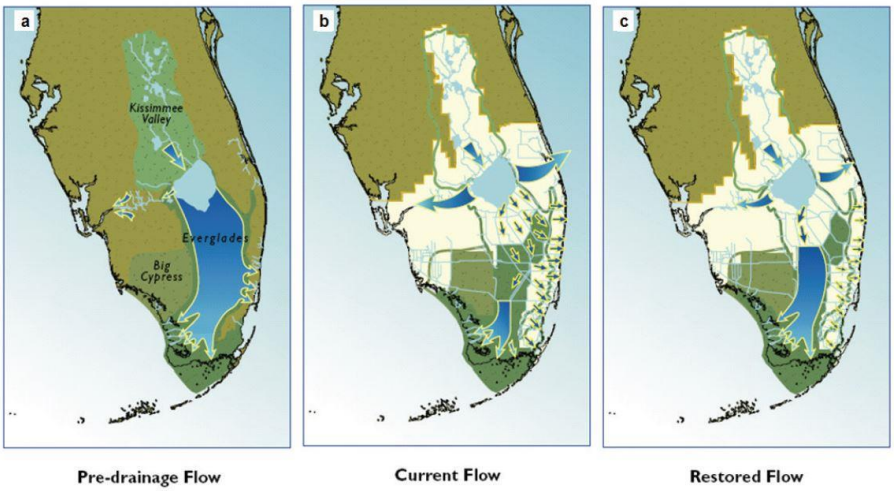
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[1] The Flood Control Act of 1948, Pub. L. No. 858, s. 203, 62 Stat. 1176.
[2] USACE and SFWMD, *Central and Southern Florida Project Comprehensive Review Study, Final Integrated Feasibility Report and Programmatic Environmental Impact Statement*, 1-1 (April 1999) [hereinafter *Restudy*], *available at* https://www.sfwmd.gov/sites/default/files/documents/CENTRAL_AND_SOUTHERN_FLORIDA_PROJECT_COMPREHENSIVE_REVIEW_STUDY.pdf (last visited Jan. 12, 2022).
[3] *Restudy*, at 1-10.
[4] U.S. Army Corps of Engineers (USACE), *Fact Sheet Central and Southern Florida Project, available at* https://www.saj.usace.army.mil/Portals/44/docs/CongressionalFS/2015/CSF_Project_(C)_CFS15.pdf (last visited Jan. 13, 2022).
[5] *Id.*
[6] *Id.*

Conservation Areas 1, 2A, and 3A.[7] The South Florida Water Management District (SFWMD) operates the remainder of the C&SF Project in accordance with regulations prescribed by USACE. SFWMD is authorized to act as local sponsor of the project for those project features located within the SFWMD.[8]

The Comprehensive Everglades Restoration Plan (CERP)

In the federal Water Resources Development Acts (WRDAs) of 1992 and 1996, Congress directed USACE to conduct a comprehensive review study of the C&SF Project (known as the "Restudy").[9] In 1999, the Restudy recommended a comprehensive restoration plan.[10]



In WRDA 2000, Congress authorized the Comprehensive Everglades Restoration Plan (CERP).[11] CERP is a framework for modifications and operational changes to the C&SF Project necessary to restore, preserve, and protect the south Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection.[12] CERP contains over 68 individual components comprising more than 50 projects.[13] These components improve delivery and timing within the Everglades system by increasing the size of natural areas, improving water quality, releasing water to mimic historical flow patterns, and storing and distributing water for urban, agricultural, and ecological uses.[14] CERP covers around 18,000 square miles, including all or part of 16 counties in central and southern Florida.[15]

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[7] *Id.*
[8] Section 373.1501(4), F.S.
[9] *Restudy*, at 1-3 through 1-7; *see also* Pub. L. No. 102-580, s. 309(l), (1992) and Pub. L. No. 104-303, s. 528 (1996).
[10] *Restudy*, at i-ii.
[11] Water Resources Development Act of 2000, Pub. L. No. 106-541, s. 601, 114 Stat. 2680 (2000).
[12] USACE and DOI, *2015-2020 Momentum, Report to Congress, Comprehensive Everglades Restoration Plan, Central and Southern Florida Project*, 4 (Dec. 2020) [hereinafter *2020 Report to Congress*], at 6, *available at* https://issuu.com/usace_saj/docs/final_2020_report_to_congress_on_cerp_progress_hig (last visited Jan. 12, 2022).
[13] *Id.* at 6-7; *see generally Restudy*. The April 1999 "Central and Southern Florida Project Comprehensive Review Study Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," commonly known as the "Yellow Book," contains the original CERP plan authorized by Congress. The plan identifies CERP components using a code of letters.
[14] *Restudy*, at vii-x.
[15] U.S. House of Representatives, Committee on Transportation and Infrastructure, *Subcommittee Hearing on "The Comprehensive Everglades Restoration Plan and Water Management in Florida"* (Sept. 21, 2020), *available at* https://www.congress.gov/116/meeting/house/111019/documents/HHRG-116-PW02-20200924-SD001.pdf (last visited Jan. 12, 2022).

The USACE has conducted an initial appraisal to review the significant changes impacting the C&SF Project that have taken place since the project's inception in 1948 and make recommendations for additional future studies.[16] The USACE recommended a project update feasibility study be prepared under the authority of Section 216 of the Flood Control Act of 1970, as amended.[17]

SFWMD has also requested the initiation of such a study, which it refers to as the Central and South Florida Flood Resiliency Study.[18] This study would analyze the C&SF Project to assess which infrastructure is at the highest risk of impact from a changing climate and address flood vulnerabilities, water supply needs, and surge protection.[19]

SFWMD Flood Protection Level of Service

To fulfill the need of long-term flood protection for basins throughout its 16-county region, the SFWMD has established a flood protection level of service (FPLOS) program.[20] The mission of this program is to identify and prioritize long-term infrastructure improvement needs, and to develop an implementation strategy to assure that each basin can maintain its designated FPLOS, in a technical and cost-effective manner, in response to population growth, land development, sea level rise, and climate conditions change.[21]

The FPLOS allows the SFWMD to evaluate the effectiveness of its flood control assets including canals, structures and pump stations to determine their ability to meet the flood protection needs of the region.[22] The C&SF Project and other basins flood protection systems have many assets that are approaching end of design life, making it critical to implement this program to inform decisions on the flood control infrastructure needs of the region.[23]

Sea Level Rise, Flooding, and Associated Costs

Climate change is causing global sea level rise, which is an observed increase in the average local sea level or global sea level trend.[24] Sea level rise is caused primarily by two factors: the loss of land-based ice (ice sheets and glaciers) due to melting, and thermal expansion caused by

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[16] SFWMD, *Initial Appraisal Report for the Central and Southern Florida Project*, *available at* https://www.sfwmd.gov/sites/default/files/documents/CSF-Sect216-Initial-Appraisal-Report-Final.pdf (last visited Jan. 5, 2022).
[17] *Id.*
[18] SFWMD, *Central and Southern Florida Flood Resiliency Study*, https://www.sfwmd.gov/our-work/central-and-southern-florida-flood-resiliency-study (last visited Jan. 4, 2022).
[19] *Id.*
[20] SFWMD, *Flood Protection Level of Service*, https://www.sfwmd.gov/our-work/flood-protection-level-service (last visited Jan. 12, 2022).
[21] *Id.*
[22] SFWMD, *Sea Level Rise and Flood Resiliency Plan, Draft Version 2.2 (Sept. 2021)*, at 10, *available at* https://www.sfwmd.gov/sites/default/files/FDEP_ResilientFlorida_ResilientProjectsPlan_09_01-2021.pdf (last visited Jan. 12, 2022).
[23] *Id.*
[24] Dep't of Environmental Protection (DEP), *Florida Adaptation Planning Guidebook*, Glossary (2018) [hereinafter *DEP Guidebook*], *available at* https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf (last visited Jan. 12, 2022).

the warming of the oceans (water expands as it warms).[25] Climate change[26] is also increasing storm intensity and increasing frequency and severity of extreme rainfall events.[27]

These trends result in increased flooding in inland and coastal areas.[28] Impacts of flooding from sea level rise in Florida include disruptions in transportation and impairment of infrastructure such as roads, stormwater systems, and wastewater systems.[29] Extreme rainfall events can stress or overwhelm stormwater infrastructure, while sea level rise impairs gravity-driven systems and reduces the discharge capacity of coastal water control structures.[30] By raising groundwater levels, sea level rise reduces the ability of rainfall to infiltrate the soil, and the reduced soil storage capacity causes flooding.[31]

Florida's 35 coastal counties contain 76% of its population and 79% of its total economy as of 2012.[32] A regional analysis found that in southeast Florida alone, by 2040, $4.2 billion in property value could be lost to daily tidal inundation and one 10-year storm tide event could cause $3.2 billion in property damage.[33] It is estimated that Florida has nine of the top ten counties in the nation for total annual risk of economic loss from flooding.[34] Despite the risks, people and capital continue to flow into exposed coastal areas in Florida.[35]

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[25] *Id.*; NOAA, *Climate Change: Ocean Heat Content*, https://www.climate.gov/news-features/understanding-climate/climate-change-ocean-heat-content (last visited Jan. 12, 2022). More than 90 percent of the warming that has happened on Earth over the past 50 years has occurred in the ocean.
[26] *See* NASA, Global Climate Change, Facts, *Effects*, https://climate.nasa.gov/effects/ (last visited Jan. 12, 2022).
[27] U.S. Global Change Research Program, *Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States*, at 31, 40-43, 97, 116-118, 745, 762, 1482 (2018) [hereinafter *NCA4*], *available at* https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf (last visited Jan. 12, 2022); IPCC, *Climate Change 2014: Synthesis Report, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, at 7-8, 10, 42, 47-49, 53, 60, 74 (2014), *available at* https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf (last visited Jan. 12, 2022).
[28] *NCA4*, at 757-768.
[29] SFRCCC, *Unified Sea Level Rise Projection Southeast Florida - 2019 Update*, at 5 (2019) [hereinafter *SFRCCC Update*], *available at* https://southeastfloridaclimatecompact.org/wp-content/uploads/2020/04/Sea-Level-Rise-Projection-Guidance-Report_FINAL_02212020.pdf (last visited Jan. 12, 2022).
[30] *NCA4*, at 763; *SFRCCC Update*, at 5, 34.
[31] *SFRCCC Update*, at 33; Florida Division of Emergency Management, *Enhanced State Hazard Mitigation Plan*, at 106-181 (2018) [hereinafter *SHMP*], *available at* https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf (last visited Jan. 12, 2022).
[32] *DEP Guidebook*, at III, *available at* https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf (last visited Jan. 12, 2022); *see also* McKinsey Global Institute, *Will Mortgages and Markets Stay Afloat in Florida?*, at 13 (2020) [hereinafter *MGI Mortgages and Markets*], *available at* https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Sustainability/Our%20Insights/Will%20mortgages%20and%20markets%20stay%20afloat%20in%20Florida/MGI_Climate%20Risk_Case%20Studies_Florida_May2020.pdf (last visited Jan. 12, 2022). Almost 10% of the state's population is less than 4.9 feet (1.5 meters) above sea level.
[33] Urban Land Institute, *The Business Case for Resilience - Regional Economic Benefits of Climate Adaptation*, at 6 (2020) [hereinafter *Business Case for Resilience*], *available at* https://knowledge.uli.org/-/media/files/research-reports/2020/the-business-case-for-resilience-in-southeast-florida_final.pdf?rev=81609c7f6b72479d89c49aff72fea446&hash=FB2E953B8A456CFE781169A0CAA82333 (last visited Jan. 12, 2022). In 2070, the estimated potential harm in Southeast Florida increases to $53.6 billion of lost property value from daily tidal inundation and $16.5 billion of property damage from one 10-year storm.
[34] First Street Foundation, *The Cost of Climate, America's Growing Flood Risk*, 11 (Feb. 2021) [hereinafter *The Cost of Climate*], *available at* https://assets.firststreet.org/uploads/2021/02/The_Cost_of_Climate_FSF20210219-1.pdf (last visited Jan. 12, 2022).
[35] *MGI Mortgages and Markets*, at 13.

As sea level rise continues, financial impacts may include increases in flood insurance costs,[36] decreases in property sales or property values, and increased risk for lenders.[37] Coastal flooding can disrupt local economies and tourism, leading to lost revenues for the public and private sectors, and over time risks include loss or impairment of employment opportunities and public services and infrastructure.[38] Coastal flooding can cause displacement in frontline communities, and the burdens of adaptation are likely to disproportionately impact vulnerable populations.[39]

Studies show significant positive returns on investment calculated for resilience measures, including the following benefit-cost ratios: $6 for every $1 spent through federal grants on natural hazard mitigation, and, for future resilience investments in southeastern Florida, $4 for every $1 on building-level adaptations, and $2 for every $1 on community-wide adaptations.[40]

Statewide Flooding and Sea-Level Rise Resilience Plan

In 2021, the Legislature enacted ch. 2021-28, Law of Fla. (Act).[41] The Act establishes statewide resiliency programs that assess and address inland and coastal flooding and sea level rise. These programs include:

- The Resilient Florida Grant Program within DEP, which provides funding, subject to appropriation, to local governments for the costs of resilience planning such as vulnerability assessments and new plans or policies.[42]
- The Comprehensive Statewide Flood Vulnerability and Sea-Level Rise Data Set and Assessment, to be updated every three years.[43] DEP must:
  - Develop a statewide data set necessary to determine the risks to inland and coastal communities, including statewide sea level rise projections; and
  - Develop a statewide assessment, based on the statewide data set, that identifies vulnerable areas and infrastructure, including "critical assets" as defined in the statute.[44]
- The Statewide Flooding and Sea-Level Rise Resilience Plan.[45] DEP must annually submit a plan proposing up to $100 million in funding for projects that address risks from flooding and sea level rise. Local governments and regional entities may submit projects, water management districts must evaluate projects and annually submit lists to DEP, and DEP must implement a scoring system for assessing projects for inclusion in the plan.[46]

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[36] *The Cost of Climate*, at 39. The report finds that if insurance prices were adjusted to account for actual current flood risk premiums for many properties in Florida would increase significantly, by as much as 4.8 to 7.7 times the current rates (depending on location), impacting property values.
[37] *MGI Mortgages and Markets*, at 22-27 (lending risks involve not only banks investing in private homes and businesses, but also potential downgrades to bond ratings for local governments that do not implement adaptation strategies); *SFRCCC Update*, at 5, *available at* https://southeastfloridaclimatecompact.org/wp-content/uploads/2020/04/Sea-Level-Rise-Projection-Guidance-Report_FINAL_02212020.pdf (last visited Jan. 12, 2022).
[38] *Business Case for Resilience*, at 13, 14, 19, 20.
[39] *Id*.; *NCA4* at 333-335.
[40] *Business case for Resilience*, at 26; National Institute of Building Sciences, *Natural Hazard Mitigation Saves*, at 1-2 (Dec. 2019), *available at* http://2021.nibs.org/files/pdfs/NIBS_MMC_MitigationSaves_2019.pdf (last visited Jan. 12, 2022).
[41] Ch. 2021-28, Laws of Fla.; codified at ss. 380.093, 380.0933, and 403.928(4), F.S.
[42] See s. 380.093(3), F.S.
[43] See s. 380.093(4), F.S.
[44] *Id*.
[45] *See* s. 380.093(5), F.S.
[46] *Id*.

In addition to establishing these programs, the Act also:

- Authorizes local governments to form regional resilience coalitions to assist with community resilience efforts, including utilization of the programs created by the bill. DEP is authorized, subject to appropriation, to provide funding to regional resilience coalitions.[47]
- Requires the University of South Florida to create a hub to coordinate and lead statewide efforts for research and innovation regarding flooding and sea level rise.[48]
- Requires the Office of Economic and Demographic Research to add an analysis of flooding issues to its annual assessment of Florida's water resources and conservation lands.[49]

As noted above, the Act authorizes each water management district and flood control district to submit to DEP a list of any proposed projects that mitigate the risks of flooding or sea level rise on water supplies or water resources of the state and a corresponding evaluation of each project.[50] Consistent with this authorization, the SFWMD has prepared a draft Sea Level Rise and Flood Resiliency Plan,[51] which is currently undergoing public review.[52] SFWMD's list of priority resiliency projects focuses primarily on the investments needed to increase the resiliency of the SFWMD's coastal structures, including structure hardening needs and additional sea level rise adaptation needs.[53] The projects identified on the list represent urgent actions that need to be taken immediately to address the vulnerability of the existing flood protection infrastructure.[54]

III. Effect of Proposed Changes:

The bill amends s. 373.1501, F.S., to provide that by October 1, 2023, and each October 1 thereafter, the South Florida Water Management District (SFWMD) must prepare and submit a consolidated annual report regarding the status of United States Army Corps of Engineers' Section 216 Central and Southern Florida Project infrastructure resiliency study to the Office of Economic and Demographic Research, the Department of Environmental Protection (DEP), the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The required report must include:

- A summary of the findings in the SFWMD's annual sea level rise and flood resiliency plan.
- A list of structures that are expected to fall below the expected service level in the next 5 years.
- Initial recommendations for the refurbishment or replacement of the structures identified in the preceding bullet, including:
  - Future cost estimates and timelines for the refurbishment or replacement of the most vulnerable structures; and

[47] *See* s. 380.093(6), F.S.
[48] *See* s. 380.0933, F.S.
[49] *See* s. 403.928(4), F.S.
[50] See s. 380.093(5)(d)2., F.S.
[51] SFWMD, *Sea Level Rise and Flood Resiliency Plan, Draft Version 2.2 (Sept. 2021), available at* https://www.sfwmd.gov/sites/default/files/FDEP_ResilientFlorida_ResilientProjectsPlan_09_01-2021.pdf (last visited Jan. 12, 2022).
[52] SFWMD, *Resiliency and Flood Protection,* https://www.sfwmd.gov/our-work/resiliency-and-flood-protection (last visited Jan. 12, 2022).
[53] SFWMD, *Sea Level Rise and Flood Resiliency Plan, Draft Version 2.2 (Sept. 2021),* 2, *available at* https://www.sfwmd.gov/sites/default/files/FDEP_ResilientFlorida_ResilientProjectsPlan_09_01-2021.pdf (last visited Jan. 12, 2022).
[54] *Id.*

- An estimate of project costs and the budget available to implement recommendations for each vulnerable structure based on a 10-year horizon.
- A summary of the state and federal funds expended toward the implementation of the United States Army Corps of Engineers' Section 216 Central and Southern Florida Project infrastructure resiliency study and other regional resiliency efforts of the district through June 30 of each year.

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:

This bill may cause the SFWMD to incur additional costs associated with the preparation and submission of the required consolidated annual report.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.1501 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 8, 2022:
The CS clarified the name of the study about which the SFWMD must prepare a report, and clarified the specific information that must be included in the report.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senators Rodriguez, Farmer, Jones, and Berman

578-02850-22 20221326c1

A bill to be entitled

An act relating to the Comprehensive Review Study of the Central and Southern Florida Project; amending s. 373.1501, F.S.; requiring the South Florida Water Management District to prepare and submit a consolidated annual report regarding the status of a specified study to the Office of Economic and Demographic Research, the Department of Environmental Protection, the Governor, and the Legislature by a specified date; providing report requirements; providing an effective date.

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

Section 1. Subsection (10) is added to section 373.1501, Florida Statutes, to read:

373.1501 South Florida Water Management District as local sponsor.—

(10)(a) By October 1, 2023, and each October 1 thereafter, the district shall prepare and submit a consolidated annual report regarding the status of the United States Army Corps of Engineers' Section 216 Central and Southern Florida Project infrastructure resiliency study to the Office of Economic and Demographic Research, the department, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(b) The report must include:

1. A summary of the findings in the district's annual sea-level rise and flood resiliency plan.

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

Florida Senate - 2022 **CS for SB 1326**

578-02850-22 20221326c1

2. A list of structures that are expected to fall below the expected service level in the next 5 years.

3. Initial recommendations for the refurbishment or replacement of the structures identified in subparagraph 2., including:

a. Future cost estimates and timelines for the refurbishment or replacement of the most vulnerable structures.

b. An estimate of project costs and the budget available to implement recommendations for each vulnerable structure based on a 10-year horizon.

4. A summary of the state and federal funds expended toward the implementation of the United States Army Corps of Engineers' Section 216 Central and Southern Florida Project infrastructure resiliency study and of other directly related flood infrastructure resiliency projects of the district through June 30 of each year.

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

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 8, 2022

I respectfully request that SB 1326, relating to Comprehensive Review Study of Central and Southern Florida Project, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

This bill requires the South Florida Water Management District to prepare and submit a consolidated annual report regarding the status of the project to the Office of Economic and Demographic Research, the Department of Environmental Protection, the Governor, and the Legislature by a specified date, etc.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

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

February 15, 2022
Meeting Date

Rules
Committee

SB 1326
Bill Number or Topic

Amendment Barcode (if applicable)

Name Natalie Fausel

Phone 561-317-0889

Address 201 West Park Ave, Ste. 100
Street

Email natalie@anfieldflorida.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Palm Beach County
Broward County

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

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

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

February 15, 2022
Meeting Date

Rules
Committee

SB 1326 - Comp Review Study
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jonathan Webber

Phone 954-593-4449

Address 1700 N. Monroe St. #11-286
Street

Email jwebber@fcvoters.org

Tallahassee FL 32303
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Conservation Voters

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

Meeting Date		1326 Bill Number or Topic
Committee		Amendment Barcode (if applicable)

Name Jess M. McCarty, Executive Assistant County Attorney Phone 305-979-7110

Address 111 NW 1st Street Email jmm2@miamidade.gov

Street

Miami FL 33128

City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

Miami-Dade County

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

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

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/CS/SB 1332
INTRODUCER:	Community Affairs Committee; Regulated Industries Committee and Senator Wright
SUBJECT:	Temporary Underground Power Panels
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon	Imhof	RI	**Fav/CS**
2.	Hunter	Ryon	CA	**Fav/CS**
3.	Sharon	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1332 prohibits counties and municipalities from enacting ordinances, regulations, or policies preventing an electric utility from installing a temporary underground (TUG) power panel during construction. The TUG power panel must meet the requirements of Article 590 of the 2020 National Electrical Code.

After an initial inspection of a TUG power panel, a county or municipality is prohibited from requiring a subsequent inspection as a condition for issuance of a certificate of occupancy.

The bill does not apply to a municipality that owns or operates an electric utility with 100,000 customers or less if the municipality's ordinance, regulation, or policy applies only to its own operations as an electric utility.

The bill defines the term "temporary underground power panel" as a permanent meter base including a meter socket, meter, and downpipe, to which power is provided through an underground service line by an electric utility pursuant to the utility's tariffs or service standards. The TUG power panel must be permanently attached to a block residential structure, provide temporary power for construction of the residential structure, and be intended for use in providing permanent service to the residential structure upon issuance of the certificate of occupancy.

The bill is effective July 1, 2022.

II. Present Situation:

Temporary Underground Power

When residential homes are under construction on undeveloped property, the homebuilder may arrange for temporary electric service to the property during construction to provide sufficient power for equipment on the job site.[1] Builders may also opt to use generators or install temporary power poles, which allow them to get enough energy for the necessary equipment on the job site.[2]

If the residence is ultimately going to receive power through an underground service line when the resident takes occupancy, a TUG service may be a more logical and cost-effective option.[3] TUG service is available for residential services where the permanent approved meter socket, meter, and downpipe are configured so they can be used for temporary service.[4]

TUG allows the contractor to install the permanent meter base as soon as the lintel or tie beam is installed on the concrete block of a residential-detached home structure.[5] This eliminates the need for temporary poles and allows the structure to receive permanent power prior to securing final inspection and a certificate of occupancy.[6]

After construction reaches a certain point and a temporary inspection takes place, the electric utility installs the permanent service to the meter socket.[7] The permanent service is then used for construction until a certificate of occupancy is obtained.[8] After the homeowner takes occupancy, the permanent connection installed for TUG service during construction is used to provide electric service to the residence.[9]

Before installing TUG service on a construction site, a builder must get approval from the county or municipality, usually through the building department.[10] Generally, the contractor must indicate a desire to participate in a TUG program at the time of permitting and sign a written TUG agreement.[11] The Contractor must make prior arrangements with the applicable electric

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[1] Power Plus, *Step-by-Step Guide: Temporary Construction Site Power*, https://www.powerplus.com/industrial-power-blog/construction-site-temporary-power/ (last visited Jan. 24, 2022).
[2] *Id*.
[3] *Id*.
[4] *See* Florida Power and Light, *Electric Service Standards* (April 2021), at page 36 of the pdf, file:///C:/Users/sharon.shirley/Downloads/electric-service-standards.pdf (last visited Jan. 24, 2022).
[5] *See* Orlando Utilities Commission, *How to Obtain Temporary Underground Service*, https://www.ouc.com/docs/customer-brochures/broc_tug.pdf?sfvrsn=9769e278_6 (last visited Jan. 24, 2022); City of Melbourne, *Temporary Underground Program Requirements*, https://www.melbourneflorida.org/departments/code-compliance-division/building-section/building-section-forms/temporary-underground-tug-program-requirements (last visited Jan. 24, 2022); Osceola County Building Office, *TUG: Temporary Under Ground Program Requirements* (January 2013) https://www.osceola.org/core/fileparse.php/2731/urlt/040521_TUG-Form-ADA.pdf (last visited Jan. 24, 2022).
[6] Orlando Utilities Commission, *supra* note 5.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] *See* Orlando Utilities Commission, *supra* note 5; City of Melbourne, *supra* note 5; Osceola County Building Office, *supra* note 5.
[11] *Id*.

utility, providing a copy of the TUG agreement, and follow any guidelines prescribed by the utility.[12]

Many counties and municipalities offer TUG service, including:
- Orange County;[13]
- Osceola County;[14]
- Palm Beach County;[15]
- Pasco County;[16]
- Pinellas County;[17]
- Volusia County;[18]
- Orlando;[19] and
- Melbourne.[20]

National Electrical Code

The National Electrical Code (NEC) is published by the National Fire Protection Association (NFPA).[21] The NEC is updated periodically, with NFPA members meeting every three years to review, modify, and add new NEC or NFPA requirements to enhance electrical safety.[22] All 50 states have adopted the NEC, which serves to safeguard persons and property from hazards arising from electric use. [23] The most recent version of the NEC was published in 2020.[24] Article 590 of the NEC covers temporary electrical power and lighting installations.[25]

[12] *See* City of Melbourne, *supra* note 5; Osceola County Building Office, *supra* note 5.
[13] Orange County, *TUG Service*, https://www.orangecountyfl.net/Portals/0/Library/Permitting-Licensing/docs/TUG%20Brochure%20CERT.pdf (last visited Jan. 24, 2022).
[14] Osceola County Building Office, *supra* note 5.
[15] Palm Beach County, *Temporary Underground Service Policy and Procedure Memorandum*, May 9, 2019, https://discover.pbcgov.org/pzb/building/BuildingCodes/PB-O-130%20-%20Temporary%20Underground%20(TUG)%20Service.pdf (last visited Jan 24, 2022).
[16] Pasco County, *TUG Service Requirements*, https://www.pascocountyfl.net/3638/TUG-Service-Requirement (last visited Jan. 24, 2022).
[17] Pinellas County, *TUG or Pre-Power Application and Agreement*, https://www.pinellascounty.org/build/PDF/Pre-Power_Tug_Inspections.pdf (last visited Jan. 24, 2022).
[18] Volusia County, *Temporary Underground Service Request Form*, https://www.volusia.org/core/fileparse.php/6038/urlt/tug.pdf (last visited Jan. 24, 2022).
[19] Orlando Utilities Commission, *supra* note 5.
[20] City of Melbourne, *supra* note 5.
[21] National Fire Protection Association, *National Electrical Code*, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=70 (last visited Jan. 26, 2022).
[22] Eaton, *For Safety's Sake: The NEC 2020 Code Review*, https://www.eaton.com/us/en-us/company/news-insights/for-safetys-sake-blog/the-NEC-2020-code-review.html#:~:text=Every%20three%20years%2C%20members%20of,the%20workplace%20and%20the%20home. (last visited Jan. 26, 2022).
[23] NFPA, *supra* note 21.
[24] *Id*.
[25] Electrical Construction & Maintenance, Mike Holt, *The Basics of Temporary Installations*, https://www.ecmweb.com/national-electrical-code/code-basics/article/20887856/the-basics-of-temporary-installations (last visited Jan. 26, 2022).

III. Effect of Proposed Changes:

The bill creates s. 125.488, F.S., to prohibit counties from enacting any ordinance, regulation, or policy that prevents, or has the effect of preventing, an electric utility from installing a TUG power panel during construction. Under the bill, the term electric utility has the same meaning as in s. 366.02(2), F.S., which includes any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state. The TUG power panel must meet the requirements of Article 590 of the 2020 National Electrical Code.

After an initial inspection of a TUG power panel, a county or municipality is prohibited from requiring a subsequent inspection as a condition for issuance of a certificate of occupancy.

The bill defines the term "temporary underground power panel" as a permanent meter base including a meter socket, meter, and downpipe, to which power is provided through an underground service line by an electric utility pursuant to the utility's tariffs or service standards. The TUG power panel must be permanently attached to a block residential structure, provide temporary power for construction of the residential structure, and be intended for use in providing permanent service to the residential structure upon issuance of the certificate of occupancy.

The bill also creates s. 166.0484, F.S., relating to ordinances, regulations, and policies concerning TUG power panels. The provisions of this section are identical to those in s. 125.488, F.S., but they apply to municipalities rather than counties.

The bill does not apply to a municipality that owns or operates an electric utility with 100,000 customers or less if the municipality's ordinance, regulation, or policy applies only to its own operations as an electric utility.

The 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Contractors who use TUG power panels during construction may realize some efficiency in the local government permitting and inspection process.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates sections 125.488 and 166.0484 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on February 8, 2022:
The CS exempts a municipality that owns or operates an electric utility with 100,000 customers or less if the municipality's ordinance, regulation, or policy applies only to its own operations as an electric utility.

CS by Regulated Industries on January 25, 2022:
The CS conforms the Senate bill to the House bill by:

- Prohibiting both counties and municipalities from enacting any ordinance, regulation, or policy preventing an electric utility from installing a TUG power panel, during construction and installation of the temporary underground power panel.
- Requiring TUG power panels to meet the requirements of Article 590 of the 2020 National Electrical Code.

- Defining an electric utility in accordance with s. 366.02(2), F.S., as any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.
- Prohibiting counties and municipalities from requiring a subsequent inspection of the TUG power panel as a condition for issuance of a certificate of occupancy, after an initial inspection.
- Defining a "temporary underground power panel" as a permanent meter base that includes a meter socket, meter, and downpipe, to which power is provided through an underground service line by an electric utility pursuant to its tariffs or service standards, that is permanently attached to a block residential structure, provides temporary power for construction of the residential structure, and is intended for use in providing permanent service to the residential structure upon issuance of the certificate of occupancy.
- Providing for a title change from temporary underground residential electric service to temporary underground power panels.

B. Amendments:

None.

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

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

578-02851-22 20221332c2

A bill to be entitled

An act relating to temporary underground power panels; creating s. 125.488, F.S.; prohibiting counties from enacting ordinances, regulations, or policies that prevent certain electric utilities from installing temporary underground power panels and from requiring subsequent inspections of such panels as a condition of a certificate of occupancy under specified conditions; defining the term "temporary underground power panel"; creating s. 166.0484, F.S.; prohibiting municipalities from enacting ordinances, regulations, or policies that prevent certain electric utilities from installing temporary underground power panels and from requiring subsequent inspections of such panels as a condition of a certificate of occupancy under specified conditions; providing an exception; defining the term "temporary underground power panel"; providing an effective date.

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

Section 1. Section 125.488, Florida Statutes, is created to read:

125.488 Ordinances, regulations, and policies concerning temporary underground power panels.—

(1) A county may not enact any ordinance, regulation, or policy that prevents or has the effect of preventing an electric utility, as defined in s. 366.02(2), from installing a temporary underground power panel if the temporary underground power panel meets the requirements of Article 590 of the National Electrical Code, 2020 edition, during the construction and installation of the temporary underground power panel. After the county has conducted an inspection of the temporary underground power panel, the county may not require a subsequent inspection of the temporary underground power panel as a condition of issuance of the certificate of occupancy.

(2) As used in this section, the term "temporary underground power panel" means a permanent meter base that includes a meter socket, meter, and downpipe, to which power is provided through an underground service line by an electric utility pursuant to its tariffs or service standards, that is permanently attached to a block residential structure, provides temporary power for construction of the residential structure, and is intended for use in providing permanent service to the residential structure upon issuance of the certificate of occupancy.

Section 2. Section 166.0484, Florida Statutes, is created to read:

166.0484 Ordinances, regulations, and policies concerning temporary underground power panels.—

(1) A municipality may not enact any ordinance, regulation, or policy that prevents or has the effect of preventing an electric utility, as defined in s. 366.02(2), from installing a temporary underground power panel if the temporary underground power panel meets the requirements of Article 590 of the National Electrical Code, 2020 edition, during the construction and installation of the temporary underground power panel. After the municipality has conducted an inspection of the temporary

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

underground power panel, the municipality may not require a subsequent inspection of the temporary underground power panel as a condition of issuance of the certificate of occupancy.

(2) This section does not apply to a municipality that owns or operates an electric utility with 100,000 customers or less if the municipality's ordinance, regulation, or policy applies only to its own operations as an electric utility.

(3) As used in this section, the term "temporary underground power panel" means a permanent meter base that includes a meter socket, meter, and downpipe, to which power is provided through an underground service line by an electric utility pursuant to its tariffs or service standards, that is permanently attached to a block residential structure, provides temporary power for construction of the residential structure, and is intended for use in providing permanent service to the residential structure upon issuance of the certificate of occupancy.

Section 3. This act shall take effect July 1, 2022.

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 9, 2022

I respectfully request that **Senate Bill 1332**, relating to Temporary Underground Residential Electric Service, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom A. Wright

Senator Tom A. Wright
Florida Senate, District 14

File signed original with committee office

S-020 (03/2004)

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 1338
INTRODUCER:	Community Affairs Committee and Senator Diaz
SUBJECT:	Floating Solar Facilities
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon	Imhof	RI	**Favorable**
2.	Hunter	Ryon	CA	**Fav/CS**
3.	Sharon	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1338, creates s. 163.32051, F.S., relating to floating solar facilities (FSF). The bill defines "floating solar facility," as a solar facility located on a wastewater treatment pond, abandoned limerock mine area, or other manmade water storage reservoir.

The bill requires FSFs to be a permitted use in appropriate land use categories in each local government's comprehensive plan. Each local government must amend its development regulations to promote the expanded use of FSFs.

The bill authorizes counties and municipalities to specify buffer and landscaping requirements, but such requirements may not exceed those for similar uses involving solar facility construction that is permitted in agricultural land use categories and zoning districts.

The bill prohibits FSF construction in an Everglades Agricultural Area reservoir project, if the local governments involved determine that there would be a negative impact on that area or project.

The bill requires the Office of Energy (OOE) within the Department of Agriculture and Consumer Services (DACS) to develop and submit recommendations to the Legislature by December 31, 2022, providing a regulatory framework for private and public sector entities that implement FSFs.

The bill is effective July 1, 2022.

II. Present Situation:

Renewable Energy

Florida law declares it to be the intent of the Legislature to:
- Promote the development of renewable energy;
- Protect the economic viability of Florida's existing renewable energy facilities;
- Diversify the types of fuel used to generate electricity in Florida;
- Lessen Florida's dependence on natural gas and fuel oil for the production of electricity;
- Minimize the volatility of fuel costs;
- Encourage investment within the state;
- Improve environmental conditions; and
- Minimize the costs of power supply to electric utilities and their customers.[1]

Section 377.803, F.S., defines "renewable energy" to mean "electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power."[2]

Florida Energy Efficiency and Conservation Act

Under the Florida Energy Efficiency and Conservation Act (FEECA),[3] enacted in 1980, the Legislature directed the Public Service Commission[4] (PSC) to develop and adopt programs for increasing energy efficiency and conservation, intending, in part, that solar energy and renewable energy sources be encouraged.[5] The Legislature's goal is to advance the conservation of expensive resources, such as petroleum fuels, in order to reduce and control electric consumption.[6]

Renewable Portfolio Standards and Goals

Renewable portfolio standards (RPS) are policies, either voluntary or formal, designed to increase the use of renewable energy sources for electricity generation.[7] RPS policies require that

[1] Section 366.92, F.S.
[2] *See also* s. 366.91, F.S.
[3] Sections 366.80-366.85, F.S.
[4] The PSC is an arm of the Legislature and its role is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, reasonable, and reliable manner. To do so, the PSC exercises regulatory authority over public utilities. Section 350.001, F.S; Florida Public Service Commission, *The PSC's Role*, http://www.psc.state.fl.us (last visited Jan. 28, 2022).
[5] Section 366.81, F.S.
[6] *Id*.
[7] U.S. Energy Information Administration, *Renewable Energy Explained: Portfolio Standards*, https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20(RPS)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs (last visited Jan. 28, 2022).

a specified percentage of the electricity sold by utilities comes from renewable resources.[8] Currently, the U.S. does not have a national RPS.[9] However, most states have enacted their own RPS programs. In recent years, state governments nationwide have revised their RPS policies to require that a specified percent of electricity sold come from renewable sources.[10] Twelve states, including Florida do not have either a formal renewable energy portfolio or a voluntary renewable energy portfolio.[11]

Solar Electrical Generation

Under current law, a solar facility is a production facility for electric power which uses photovoltaic modules to convert solar energy to electricity that may be stored on site, delivered to a transmission system, and consumed primarily offsite.[12] It consists principally of photovoltaic modules, a mounting or racking system, power inverters, transformers, collection systems, battery systems, fire suppression equipment, and associated components.[13] It may include accessory administration or maintenance buildings, electric transmission lines, substations, energy storage equipment, and related accessory uses and structures.[14]

Americans overwhelmingly favor renewable energy and the cost of solar power has declined rapidly in recent years.[15] However, utility-scale solar generation requires larger quantities of land than traditional power plants.[16] Solar generation requires ten times the land per unit of power produced than coal or natural gas plants.[17] This can make siting solar facilities challenging and unpopular among residents in the area who do not want unsightly large scale projects near their homes.[18]

Floating Solar "Floatovoltaics"

Floating Solar, known colloquially as the portmanteau "floatovoltaics," refers to a photovoltaic system mounted on linked floating arrays.[19] Solar arrays may be installed across calm bodies of water such as stormwater retention ponds, industrial pools, water reservoirs, small lakes, and

[8] National Conference of State Legislatures, *State Renewable Portfolio Standards and Goals*, https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx (last visited Jan. 28, 2022).
[9] U.S. EIA, *supra* note 7.
[10] *Id*.
[11] *Id*.
[12] Section 163.3205(a), F.S.
[13] Section 163.3205(b), F.S.
[14] Section 163.3205(c), F.S.
[15] Samantha Gross, *Renewables, land use, and local opposition in the United States*, Jan. 2020, https://www.brookings.edu/research/renewables-land-use-and-local-opposition-in-the-united-states/ (last visited Jan. 28, 2022).
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] Florida Dept. of Agriculture and Consumer Services, *2022 Legislative Bill Analysis for SB 1338*, p. 1 (Jan. 10, 2022) (on file with the Senate Committee on Regulated Industries).

other natural and manmade bodies of water.[20] The solar panels are affixed to a buoyant structure, keeping the panels above the surface.[21]

This technology was first patented in 2008.[22] The technology is predominantly installed in countries such as Japan, China, and the U.K.[23] However, researchers at Department of Energy's National Renewable Energy Laboratory estimate that "installing floating solar photovoltaics on the more than 24,000 man-made U.S. reservoirs could generate about 10 percent of the nation's annual electricity production."[24]

Floating Solar in Florida

In comparison to other states, Florida's low-lying topography and abundant sunshine has the greatest potential for energy generation from floating solar.[25] Researchers have identified a subset of 172 manmade bodies of water capable of generating approximately 13.69 gigawatts of energy.[26]

Recently, Florida has seen floating solar panels installed in Altamonte Springs, Miami-Dade County, and Orlando. The Altamonte Electric Authority, as its first project, installed a floating solar array consisting of 2,430 panels, generating one megawatt of electricity, making it the largest in Florida and the third largest in the United States.[27] Florida Power and Light Company partnered with Miami-Dade County to install a 402-panel floating solar installation near Miami International Airport,.[28]

In Orlando, a collection of 360 solar panels, arranged in the shape of the airport's logo which can light up at night, was installed at Orlando International Airport in partnership with the Orlando Utilities Commission.[29] The FSF is capable of powering about 14 homes.[30] Additionally, the Orlando Utilities Commission began a pilot project in 2017, establishing a 31.5 kilowatt floating solar array at its headquarters.[31] The Florida Solar Energy Center at the University of Central

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[20] Energy Sage, *Floating Solar: What You Need to Know*, https://news.energysage.com/floating-solar-what-you-need-to-know/ (last visited Jan. 28, 2022).
[21] *Id*.
[22] *Id*.
[23] *Id*.
[24] National Renewable Energy Laboratory, *News Release: NREL Details Great Potential for Floating PV Systems*, Dec. 27, 2018, https://www.nrel.gov/news/press/2018/nrel-details-great-potential-for-floating-pv-systems.html (last visited Jan. 28, 2022).
[25] DACS, *supra* note 19, at p. 2.
[26] *Id*.
[27] Altamonte Electric Utility, *The City of Altamonte Springs Invests In Renewable Energy to Power the Future*, p. 1, available at http://www.altamonte.org/DocumentCenter/View/8800/AEU-Solar-Array-Info-Sheet (last visited Jan. 28, 2022).
[28] Victoria Lewis, *FPL launches nation's first floating solar array at Miami International Airport*, WPTV (Jan. 29, 2020), https://www.wptv.com/news/state/fpl-launches-nations-first-floating-solar-array-at-miami-international-airport (last visited Jan. 28, 2022).
[29] Jessica Albert, Fox 35 Orlando, *Orlando International Airport Unveils Its 1st Floating Solar Array*, Dec. 10, 2020, https://www.fox35orlando.com/news/mco-debuts-floating-solar-array (last visited Jan. 28, 2022).
[30] *Id*.
[31] DACS, *supra* note 19, at p. 2; Southern Alliance for Clean Energy, *Orlando/OUC "The Reliable One" Exhibiting Real Leadership on Renewable Energy*, Jan. 27, 2020, https://cleanenergy.org/blog/orlando-ouc-the-reliable-one-exhibiting-real-leadership-on-renewable-energy/ (last visited Jan. 28, 2022).

Florida is leading a nationwide team of researchers to study the effects of floating solar, with a $1 million grant from the U.S. Department of Energy's Solar Energy Technologies Office.[32]

In 2021, the Solar Energy Technologies Office awarded a $1.5 million grant for a project located in Tallahassee to develop a new racking system, which is easier to deploy and will advance manufacturing for FSFs to improve U.S. competitiveness in the market.[33] The project will reduce the cost of floating solar, making it similar to or less than the cost of solar systems mounted on the ground.[34]

Local Land Development and Comprehensive Plans

The Community Planning Act (act) directs the manner in which local governments create and adopt their local comprehensive plans.[35] The act prescribes certain principles, guidelines, standards, and strategies to allow for orderly and balanced future land development.[36] Section 163.3177, F.S., outlines the required and optional elements of a comprehensive plan and includes provisions which govern agricultural lands and practices.[37]

Section 163.3205(3), F.S., requires solar facilities to be a permitted use in all agricultural land use categories in a local government's comprehensive plan and all agricultural zoning districts within an unincorporated area. Solar facilities must comply with setback and landscaped buffer area criteria for similar uses in the agricultural district.[38] A county may adopt ordinances specifying buffer and landscaping requirements for solar facilities.[39] Such requirements may not exceed those for similar uses involving construction of other facilities permitted in agricultural land use categories and zoning districts.[40]

Everglades Agricultural Area

The South Florida Water Management District and the U.S. Army Corps of Engineers are working on the Everglades Agricultural Area (EAA) Reservoir Project.[41] The EAA Reservoir Project was conditionally authorized in the federal Water Resources Development Act of 2000 as a component of The Comprehensive Everglades Restoration Plan.[42]

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[32] Univ. of Central Florida, *UCF Leads National Team to Study Floating Solar*, Nov. 4, 2019, https://www.ucf.edu/news/ucf-leads-national-team-to-study-floating-solar/ (last visited Jan, 28, 2022).
[33] U.S. Dept. Energy, *Solar Energy Technologies Office Fiscal Year 2021 Systems Integration and Hardware Incubator Funding Program*, https://www.energy.gov/eere/solar/solar-energy-technologies-office-fiscal-year-2021-systems-integration-and-hardware (last visited Jan. 28, 2022).
[34] *Id*.
[35] Section 163.3167(2), F.S.
[36] *Id*.
[37] Section 163.3162, F.S.
[38] Section 163.3205(3), F.S.
[39] Section 163.3205 (4), F.S.
[40] Section 163.3205(4), F.S.
[41] South Florida Water Management District, *Progress Continues on the Everglades Agricultural Area Reservoir Project*, https://www.sfwmd.gov/our-work/cerp-project-planning/eaa-reservoir (last visited Jan. 22, 2022).
[42] Id.

To accelerate progress on the project, the Legislature passed SB 10 (Reg. Sess. 2017).[43] The project aims to construct a treatment wetland that will clean water and a reservoir that will store excess water from Lake Okeechobee.[44]

The Office of Energy

The Legislature created the OOE within the DACS to act as the energy policy and program development office for the State of Florida.[45] According to the DACS, the OOE evaluates energy-related studies, analyses and stakeholder input to recommend energy policies and programs that will move Florida toward a more diverse, stable, and reliable energy portfolio.[46] Moreover, the DACS is responsible for the administration of a number of programs relating to energy infrastructure, including the Renewable Energy and Energy-Efficient Technologies Grants Program,[47] the Energy Efficiency and Conservation Clearinghouse,[48] the Florida Green Government Grants Act,[49] and the Natural Gas Fuel Fleet Vehicle Rebate Program.[50] Additionally the DACS has the statutory authority to allocate federal energy conservation bonds[51] and to post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use.[52]

III. Effect of Proposed Changes:

The bill states the following legislative findings:

- FSFs, "floatovoltaics," can be effective tools in harnessing energy on manmade bodies of water;
- Siting FSFs on wastewater treatment ponds, abandoned limerock mine areas, and other water storage reservoirs is a beneficial use of those areas, whereas the panels cool off in the water, which can boost power production, and help decrease water lost to evaporation and the formation of harmful algal blooms; and
- Siting of FSFs should be encouraged by local governments as an appropriate use of water and land areas.

[43] Ch. 2017-10 Laws of Fla.
[44] *Id*.
[45] Section 377.805, F.S.; Florida Dept. Agriculture and Consumer Services, *Office of Energy*, https://www.fdacs.gov/Divisions-Offices/Energy (last visited Jan. 28, 2022).
[46] *Id*.
[47] Section 377.804, F.S. (establishing the Renewable Energy and Energy-Efficient Technologies Grants Program "to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies that significantly increase energy efficiency for vehicles and commercial buildings.").
[48] Section 377.805, F.S., (requiring the development of a clearinghouse of "information regarding cost savings associated with various energy efficiency and conservation measures" in consultation with the PSC, the Florida Building Commission, and the Florida Energy Systems Consortium).
[49] Section 377.808, F.S., (directing the DACS to use appropriated funds to award grants that assist local governments and school districts with development and implementation of programs aimed at achieving green standards).
[50] Section 377.810, F.S., (establishing the program within the DACS to help reduce transportation costs and encourage freight mobility investments contributing to the state's economic growth).
[51] Section 37.816, F.S.
[52] Section 377.815, F.S.

The bill creates s. 163.32051, F.S., relating to FSFs. The bill defines "floating solar facility," as a solar facility located on a wastewater treatment pond, abandoned limerock mine area, or other manmade water storage reservoir.

The bill defines the term solar facility pursuant to s. 163.3205(2), which is a production facility for electric power using photovoltaic modules to convert solar energy to electricity that may be stored on site, delivered to a transmission system, and consumed primarily offsite. It consists principally of photovoltaic modules, a mounting or racking system, power inverters, transformers, collection systems, battery systems, fire suppression equipment, and associated components. It may include accessory administration or maintenance buildings, electric transmission lines, substations, energy storage equipment, and related accessory uses and structures.

The bill requires FSFs to be a permitted use in appropriate land use categories in each local government's comprehensive plan. Each local government must amend its development regulations to promote the use of FSFs.

The bill authorizes counties and municipalities to specify buffer and landscaping requirements, but such requirements may not exceed those for similar uses involving solar facility construction that is permitted in agricultural land use categories and zoning districts.

The bill prohibits FSF construction in an Everglades Agricultural Area reservoir project, if the local governments involved determine that there would be a negative impact on that area or project.

The bill requires the OOE within the DACS to develop and submit recommendations to the Legislature by December 31, 2022, providing a regulatory framework for private and public sector entities that implement floating solar facilities.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. Local governments may need to spend funds to amend their land development regulations to promote the expanded use of floating solar facilities and to recognize such facilities as a permitted use in the appropriate land use categories in a comprehensive plan. However, the mandates requirements do not

apply to laws that have an insignificant impact,[53, 54] which is $2.3 million or less for Fiscal Year 2022-2023.[55]

If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house of the Legislature.

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 result in a positive fiscal impact to the private sector by stimulating installation of FSFs and may result in an increase in jobs, profit, manufacturing, and services associated with FSFs.

C. Government Sector Impact:

The DACS does not anticipate that the bill will result in a fiscal impact and should be able to implement the reporting requirement with existing OOE staff.[56] The bill may have an impact on local government expenditures due to the requirement for local governments to amend their land development regulations.

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[53] FLA. CONST. art. VII, s. 18(d).
[54] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Feb. 7, 2022).
[55] Based on the Demographic Estimating Conference's population adopted on March 3, 2021. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Feb. 7, 2022).
[56] DACS, *supra* note 19, at p. 3.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 163.32051 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 8, 2022:
The CS includes municipalities in the provision that allows counties to adopt an ordinance specifying buffer and landscaping requirements for floating solar facilities. The CS also removes the Lake Belt Area from the subsection providing where floating solar facilities may not be constructed under certain circumstances.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Diaz

578-02852-22 20221338c1

A bill to be entitled

An act relating to floating solar facilities; creating s. 163.32051, F.S.; providing legislative findings regarding floating solar facilities; defining the term "floating solar facility"; providing that a floating solar facility must be a permitted use in appropriate land use categories in each local government's comprehensive plan; requiring each local government to amend its development regulations to promote the expanded use of floating solar facilities; authorizing counties and municipalities to specify certain buffer and landscaping requirements for floating solar facilities; providing exceptions to the construction of floating solar facilities; requiring the Office of Energy within the Department of Agriculture and Consumer Services to submit specified recommendations to the Legislature to provide a regulatory framework relating to floating solar facilities; providing an effective date.

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

Section 1. Section 163.32051, Florida Statutes, is created to read:

163.32051 Floating solar facilities.—

(1)(a) The Legislature finds that floating solar facilities, also known as "floatovoltaics," can be effective tools in harnessing energy on manmade bodies of water.

(b) The Legislature finds that siting floating solar

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

578-02852-22 20221338c1

facilities on wastewater treatment ponds, abandoned limerock mine areas, and other water storage reservoirs is a beneficial use of those areas for many reasons, which include that the water has a cooling effect on the solar panels which can boost power production and that the panels help decrease the amount of water lost to evaporation and the formation of harmful algal blooms.

(c) Therefore, the Legislature finds that the siting of floating solar facilities should be encouraged by local governments as appropriate uses of water and land areas.

(2) For purposes of this section, the term "floating solar facility" means a solar facility as defined in s. 163.3205(2) which is located on a wastewater treatment pond, abandoned limerock mine area, or other manmade water storage reservoir.

(3) A floating solar facility shall be a permitted use in the appropriate land use categories in each local government's comprehensive plan, and each local government must amend its land development regulations to promote the expanded use of floating solar facilities.

(4) A county or municipality may adopt an ordinance specifying buffer and landscaping requirements for floating solar facilities. The requirements may not exceed the requirements for similar uses involving the construction of other solar facilities that are permitted uses in agricultural land use categories and zoning districts.

(5) Notwithstanding subsections (3) and (4), a floating solar facility may not be constructed in an Everglades Agricultural Area reservoir project if the local governments involved with the project determine that the floating solar

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

facility will have a negative impact on that project.

(6) The Office of Energy within the Department of Agriculture and Consumer Services shall develop and submit recommendations to the Legislature by December 31, 2022, to provide a regulatory framework for private and public sector entities that implement floating solar facilities.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1360
INTRODUCER:	Senator Wright
SUBJECT:	Governor's Medal of Freedom
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	**Favorable**
2.	Brown	Phelps	RC	**Favorable**

I. Summary:

SB 1360 saves from repeal the Governor's Medal of Freedom. The Governor's Medal of Freedom authorizes the Governor to present a medal of freedom to a person who has made an especially meritorious contribution to the state.

The bill replaces the term "citizens" with "residents."

The repealer date of July 1, 2022, is removed from statute.

II. Present Situation:

Governor's Medal of Freedom

The Governor's Medal of Freedom, enacted in the state in 2020[1], authorizes the Governor to present a medal to a person who has made an especially meritorious contribution to the citizens of the state, its culture, or other significant public or private endeavor.[2] The medal itself contains an inscription and a ribbon.[3]

If the Governor has selected a recipient who has died prior to being awarded the medal, the Governor may present the medal to a person otherwise designated.[4]

Authority for the Governor's Medal of Freedom is set to expire July 1, 2022. Florida is the only state to statutorily authorize a Governor's Medal of Freedom.

[1] Ch. 2020-114, Laws of Fla.
[2] Section 14.35, F.S.
[3] Section 14.35(1), F.S.
[4] Section 14.35(2)(a), F.S.

Previous Recipients of the Medal of Freedom

The Governor has previously twice awarded the Medal of Freedom. On April 7, 2021, the Governor awarded the inaugural Medal of Freedom to Bobby Bowden, long-time head football coach for the Florida State University.[5] In support, the Governor cited not only Coach Bowden's formidable achievement in launching the Florida State University Seminoles into a top nationally-recognized football program, but also his positive and enduring influence on the student athletes.[6] During the ceremony, the Governor proclaimed April 7, 2021, Bobby Bowden Day.[7]

On September 16, 2021, the Governor presented the Medal of Freedom to Felix Rodriguez, a former paramilitary officer in the CIA who served during the Bay of Pigs Invasion, and also as an Army Colonel during the conflict in Vietnam.[8] At the presentation ceremony, the Governor noted, "Felix's life has been dedicated to fighting communism, to supporting freedom, to supporting liberty, and we appreciate Felix as a brave and courageous freedom fighter."[9] In addition to awarding the Medal of Freedom, the Governor proclaimed September 16, 2021 Felix I. Rodriguez-Mendigutia Day.[10]

III. Effect of Proposed Changes:

SB 1360 saves from repeal the Governor's Medal of Freedom, thereby enabling the Governor to award Medals of Freedom. The Governor may present a Medal of Freedom to a person who has made an especially meritorious contribution to the state.

The bill replaces the term "citizens" with "residents."

The repealer date of July 1, 2022, is removed from statute.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[5] The Florida Channel, *4/7/21 Ceremony to Honor Florida Medal of Freedom Recipient Bobby Bowden*, available at 4/7/21 Ceremony to Honor Florida Medal of Freedom Recipient Bobby Bowden - The Florida Channel
[6] *Id*.
[7] *Id*.
[8] Executive Office of the Governor, *Press Release: Governor Ron DeSantis Awards Felix Rodriguez with Governor's Medal of Freedom*, Sept. 17, 2021, available at Governor Ron DeSantis Awards Felix Rodríguez with Governor's Medal of Freedom (flgov.com)
[9] *Id*.
[10] *Id.*

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:

A fiscal impact is not expected; therefore, an appropriation is not needed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 14.35 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.

By Senator Wright

14-00982-22 20221360__

A bill to be entitled

An act relating to the Governor's Medal of Freedom; amending s. 14.35, F.S.; abrogating the repeal of provisions authorizing the Governor to present the Governor's Medal of Freedom to certain persons; providing an effective date.

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

Section 1. Section 14.35, Florida Statutes, is amended to read:

14.35 Governor's Medal of Freedom.—

(1) The Governor may present, in the name of the State of Florida, a medal to be known as the "Governor's Medal of Freedom," which shall bear a suitable inscription and ribbon of appropriate design, to any person who has made an especially meritorious contribution to the interests and residents ~~citizens~~ of this ~~the~~ state, its culture, or other significant public or private endeavor.

(2)(a) In the event of the death of an individual ~~who has been~~ chosen to receive the Governor's Medal of Freedom, the medal may be presented to a designated representative of the chosen recipient.

(b) The Governor's Medal of Freedom may only be presented to an individual once.

~~(3) This section expires July 1, 2022.~~

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

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 **Senate Bill 1360**, relating to Governor's Medal of Freedom, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom A. Wright

Senator Tom A. Wright
Florida Senate, District 14

File signed original with committee office

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 1368
INTRODUCER:	Banking and Insurance Committee and Senator Gruters
SUBJECT:	Trusts
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Favorable**
2.	Schrader	Knudson	BI	**Fav/CS**
3.	Bond	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1368 amends trust law to:

- Extend the alternative perpetuities limit on the life of a trust from 360 years to 1,000 years for trusts created on or after the effective date of the bill.
- Allow family trust companies, licensed family trust companies, and foreign licensed family trust companies, to elect a simplified form of periodic accounting, provided that the accounting contains sufficient notice of trust assets, debts, and transactions during the accounting period.
- Allow, for family trust companies, licensed family trust companies, or foreign licensed family trust companies that are trustees of irrevocable trusts, the terms of such trusts to permit the accounting to the qualified beneficiaries only at the termination of the trust; upon the removal, resignation, or other event resulting in a trustee ceasing to serve as a trustee; or upon demand of a qualified beneficiary or the representative of a qualified beneficiary.
- Simplify, for family trust companies, licensed family trust companies, and foreign licensed family trust companies, service of trust notices furnished by e-mail, including waiver of the current law requirement that the recipient annually agree to electronic notice.
- Expand the scope of representation by a parent to include unborn descendants of an unborn child.
- Extend the allowable life of a noncharitable trust to 1,000 years.
- Extend the authority of a trust to reimburse the grantor for certain tax liabilities to apply to a trust formed under the laws of a foreign jurisdiction if the trust has a principal place of administration in the state.

The bill takes effect July 1, 2022.

II. Present Situation:

Trusts - In General

A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person. A trust arises as a result of a manifestation of an intention to create it. Except as otherwise provided, the Florida Trust Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust. The Code does not apply to: constructive or resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another. The Code does not apply to any land trust under statute except to the extent as otherwise provided by statute.[1]

The Trust Code provides a comprehensive administrative framework for operation of a trust. However, the express terms of a trust agreement prevail over a conflicting provision in statute, except for provisions that are deemed mandatory.[2] The following statutory terms of a trust are mandatory:[3]

- The requirements for creating a trust.
- The duty of the trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
- The requirement that a trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.
- The periods of limitation for commencing a judicial proceeding.
- The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.
- The requirements for designation of a principal place of administration of the trust and the requirements for the designation of a jurisdiction the law of which determines the meaning and effect of the terms of a trust.
- The jurisdiction and venue provisions.
- The restrictions on the designation of representative.
- The formalities required for the execution of a trust.
- The power of the court to modify or terminate a trust.
- The ability to modify a trust under the requirements for nonjudicial modification of an irrevocable trust, except as provided in the Code for certain trusts created after December 31, 2000.

[1] 55A FLA. JUR. 2D TRUSTS § 1; and s. 736.102, F.S.
[2] Section 736.0105, F.S.
[3] *Id.*

- The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust.
- The trustee's duty to pay expenses and obligations of the settlor's estate.
- The trustee's duty to file a notice of trust at the settlor's death.
- The right of a trustee to decline a trusteeship and the right of a trustee to resign a trusteeship.
- The power of the court to require, dispense with, modify, or terminate a bond.
- The power of the court to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.
- The duty of the trustee to notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of the trustee, and of their rights to trust accountings.
- The duty of the trustee to provide a complete copy of the trust instrument and to account to qualified beneficiaries.
- The duty of the trustee to respond to the request of a qualified beneficiary of an irrevocable trust for relevant information about the assets and liabilities of the trust and the particulars relating to trust administration.
- The effect of an exculpatory term.
- The rights of a person other than a trustee or beneficiary.
- The effect of a penalty clause for contesting a trust.

Furthermore, the common law of trusts and principles of equity supplement the Code except to the extent modified by the Code or another law of Florida.[4]

Allowable Lifetime of a Trust

The maximum allowable life of a trust depends on the type of trust. There is no statutory minimum life of a trust and no limit on creation of a trust term of less than the maximum.

Private Trusts and the Rule Against Perpetuities

The legal life of a private trust was until recently governed solely by the common law Rule Against Perpetuities. The rule originated from an English court decision in 1682. The rule provides that a nonvested (also known as contingent) interest[5] in property or a power of appointment in a trust is invalid unless it can be said, with absolute certainty, that it will either vest or terminate no later than 21 years after the death of an individual alive at the creation of the trust interest. The primary objective of the rule is to prevent perpetual control and unreasonable restraints upon the alienation of property by invalidating, after a specific time, any future nonvested interest created either by a will, deed, or power of appointment.[6] The meaning of the Rule can be very difficult to decipher.[7] At common law, the rule also carried with it some

[4] FLA. JUR, *supra* note 1.
[5] Contingent remainders, executory interests, vested remainders subject to open (class gifts), options to purchase (not attached to a leasehold), and rights of first refusal are subject to the Rule Against Perpetuities. Vested interests, reversion, possibilities of reverter, charity to charity dispositions, and rights of entry are not subject to the rule.
[6] A power of appointment is a power delegated to another to exercise prescribed powers on behalf of the person who delegated the powers.
[7] *Rule Against Perpetuities*, Legal Information Institute: Cornell Law School, https://www.law.cornell.edu/wex/rule_against_perpetuities#:~:text=A%20common%20law%20property%20rule,the%20creation%20of%20the%20interest (last visited Feb. 5, 2022).

arguably absurd legal fictions such as the fertile-octogenarians[8] and precocious toddlers,[9] which, essentially said that a person is considered capable of having a child no matter their age or physical condition. Given these issues, may states have modified or abolished the Rule Against Perpetuities.[10]

In 1988, the Florida Legislature enacted the Florida Uniform Statutory Rule Against Perpetuities[11] which essentially codified the common law Rule Against Perpetuities.[12] However, the uniform act also includes a "wait and see" provision that alternatively allows the valid duration of a trust to be 90 years[13] from the date of the trust's creation. Under the 1988 law, a property interest or the power of appointment must vest or terminate within a "life in being plus 21 years" or within the 90-year period in order to be valid. The simplicity of the 90-year rule avoids the often difficult interpretations of the common law rule.

There has been a trend among states[14] to eliminate or limit the rule against perpetuities in order to facilitate the establishment of long-term, multi-generational trusts (sometimes referred to as "dynasty trusts") and to assist individuals in limiting federal estate and generation-skipping transfer taxes.[15] However, Congress has reacted accordingly. Although it is possible to shield a trust from federal estate and generation-skipping transfer taxes, as long as the interests of the trust are valid for an ascertainable period, there are limits on how much can be placed into these trusts, and taxes may be owed upon transfer at some point or upon termination. Overall, the federal tax laws have been interpreted to mean that if a trust has no limit on its existence and the beneficiary exercises power in such a way to extend the trust forever, the exercise by a beneficiary of a power of appointment could potentially and immediately trigger the gift or estate tax.[16] In 2000, Florida avoided this potential tax issue and addressed the desire to allow longer

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[8] *Fertile-octogenarian Rule*, Legal Information Institute: Cornell Law School, https://www.law.cornell.edu/wex/fertile-octogenarian_rule#:~:text=The%20fertile%2Doctogenarian%20rule%20means,their%20age%20or%20physical%20condition (last visited Feb. 5, 2022).

[9] Robert Lynn, *A Practical Guide to the Rule Against Perpetuities,* 2 DUKE LAW JOURNAL 207 (1964), *available at:* https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1908&context=dlj.

[10] *Fertile-octogenarian Rule, supra* note 8.

[11] Thirty-one states (including Florida) have adopted the National Conference of Commissioners on Uniform State Law's Uniform Statutory Rule Against Perpetuities. https://www.uniformlaws.org/committees/community-home?CommunityKey=addf3263-af92-4421-a83c-2ef7bc9a1b94 (last visited Feb. 5, 2022).

[12] Chapter 88-40, Laws of Fla; s. 689.225, F.S.

[13] The 90-year period was intended to approximate an average time period that would apply in a 21-years plus a life in being situation. *See* USRAP comments, 8B ULA 342.

[14] *E.g.*, Delaware, Illinois, Kentucky, Ohio, Pennsylvania, Rhode Island,and Virginia. *See* Patrick Hicks, *A Guide to Dynasty Trusts*, Trust and Will, https://trustandwill.com/learn/dynasty-trust (last visited Feb. 5, 2022).

[15] The federal generation-skipping transfer tax was designed to diminish the ability to avoid successive transfer taxes. *See* s. 2601 et seq. Internal Revenue Code.

[16] For example, Delaware enacted law that allowed trust beneficiaries to avoid federal estate taxes through a manipulation of the rule against perpetuities and essentially create a trust in perpetual existence. As long as the beneficiaries of each generation took the necessary action to extend the period in the rule against perpetuities and the assets remained inside the trust, the trust would not violate the Rule Against Perpetuities. In response, Congress enacted sections 2041(a)(3) and 2514(d) of the Internal Revenue Code, also known as the "Delaware tax trap," to address the Delaware law. The "Delaware tax trap" states that if a beneficiary exercises a power that allows vesting of the trust property to be postponed "for a period ascertainable without regard to the date of the creation of the [beneficiary's] power," the exercise of the beneficiary's power triggers a gift tax or estate tax.

legacy trusts by extending the allowable length of a private trust from 90 years to 360 years for trusts created after December 31, 2000.[17]

Charitable and Noncharitable Trusts

A charitable trust is created for the benefit of one or more charitable purposes such as the relief of poverty; the advancement of arts, sciences, education, or religion; or the promotion of health, governmental, or municipal purposes.[18] A charitable trust is not governed by the Rule Against Perpetuities and thus may have an unlimited life.[19]

A noncharitable trust is a trust with a purpose that is not charitable and no individual beneficiaries. Noncharitable trusts are limited to 21 years existence.[20]

Mandatory Duty to Account to Qualified Beneficiaries

A trustee of an irrevocable trust must provide an accounting to the qualified beneficiaries at least annually and upon termination of the trust or upon a change in trustee.[21] This duty may not be modified by the trust agreement.[22] An accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the trustee became accountable, and it must adequately disclose:

- All cash and property transactions.
- All significant transactions affecting administration during the accounting period.
- Compensation paid to the trustee and the trustee's agents.
- Gains and losses realized during the accounting period.
- All receipts and disbursements.
- Trust assets on hand at the close of the accounting period, showing the asset acquisition value or carrying value and the estimated current value.
- Known noncontingent liabilities.
- Significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.
- The allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.[23]

A qualified beneficiary may waive the accounting requirement.[24]

[17] Chapter 2000-245, Laws of Fla.; s. 689.225(2)(f), F.S.
[18] Section 736.0405(1), F.S.
[19] Section 689.225(5)(e), F.S.
[20] Section 736.0409(1), F.S.
[21] Section 736.0813(1)(d), F.S.
[22] Section 736.0105(2)(s), F.S.
[23] Section 736.08135, F.S.
[24] Section 736.0813(2), F.S.

Notices from a Trust by Electronic Means

Numerous provisions in the Trust Code require that a notice or document be given to a person related to a trust. In general, notice "must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document."[25] While still allowing traditional notice by mail or personal delivery, the Trust Code has been modernized to allow notice and delivery by "electronic means" without preference for any specific technology. Where delivery is solely by posting on an electronic account or website, the following requirements must be met:

- The recipient must have signed a written authorization for electronic notice.
- A notice must be provided upon every posting to the online account.
- The recipient must be given an annual notice of his or her legal rights regarding electronic posting, including a notice regarding applicable statutes of limitation.
- The electronic posting must be available for at least 4 years.[26]

Grantor Trust Reimbursement

If a trust is treated as being owned by a person under the Internal Revenue Code or any similar federal, state, or other tax law, the trustee may, in the trustee's sole discretion, reimburse the person being treated as the owner for any amount of the person's personal federal, state, or other income tax liability which is attributable to the inclusion of the trust's income, capital gains, deductions, or credits in the calculation of the person's taxable income.[27] With limited exceptions, this law applies to all trusts.

Family Trust Companies, Licensed Family Trust Companies, and Foreign Licensed Family Trust Companies

Chapter 662, F.S., also known as the Florida Family Trust Company Act, establishes requirements for licensing family trust companies, regulates persons who provide fiduciary services to family members of no more than two families and their related interests as a family trust company, and establishes the degree of Office of Financial Regulation (OFR) oversight required over such companies. A primary concern of the chapter is to ensure that fiduciary activities performed by a family trust company are restricted to family members and their related interests.[28]

Section 662.111, F.S. provides the definitions for ch. 662, F.S., and defines a:

- "Family trust company" as a corporation or limited liability company that:
  - Is exclusively owned by one or more family members;
  - Is organized or qualified to do business in Florida;
  - Acts or proposes to act as a fiduciary to serve one or more family members; 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

[25] Section 736.0109(1), F.S.
[26] Section 736.0109(3), F.S.
[27] Section 736.08145(1), F.S.
[28] Section 662.102, F.S.

the family trust company or one or more trusts, companies, or other entities that are family members.

- "Licensed family trust company" as a family trust company that operates in accordance with ch. 662, F.S., and has a valid license from the OFR.
- "Foreign licensed family trust company" as a family trust company that:
  - Is licensed by a state in the United States other than Florida, or the District of Columbia.
  - Has its principal place of business in a state in the United States other than Florida, or the District of Columbia.
  - Is operated in accordance with family or private trust company laws of the state in which it is licensed, or of the District of Columbia.
  - Is subject to statutory or regulatory mandated supervision by the state in which the principal place of business is located, or by the District of Columbia.
  - Is not owned by, or a subsidiary of, a corporation, limited liability company, or other business entity that is organized in, or licensed by, any foreign country.

III. Effect of Proposed Changes:

Rule Against Perpetuities (Section 1)

Applicable to a trust created on or after July 1, 2022, the 360 year limit on private trusts is extended to 1,000 years. The 360 year limit applies to trusts created after December 31, 2000, and through June 30, 2022.

Mandatory Duty to Account to Qualified Beneficiaries (Sections 2, 6, and 7)

The bill creates an exception to the mandatory comprehensive annual accounting requirement by allowing family trust companies, licensed family trust companies, or foreign licensed family trust companies that are trustees of irrevocable trusts to, if the terms of such trust permit, to provide an accounting to the qualified beneficiaries only at the termination of the trust; upon the removal, resignation, or other event resulting in a trustee ceasing to serve as a trustee; or upon demand of a qualified beneficiary or the representative of a qualified beneficiary.

In addition, the bill also allows family trust companies, licensed family trust companies, or foreign licensed family trust companies to elect to furnish to the trust's qualified beneficiaries a summary statement in lieu of the current comprehensive annual accounting. The statement must provide:

- Notice that the trustee has made such an election;
- The name of the trust, the trustee furnishing the accounting, and the time period covered by the accounting;
- If a final accounting, a plan for distribution of the remaining assets; and
- A summary of the other information currently required to be set out in detail, provided that the summary contains sufficient information to put the beneficiary on notice of the trust assets, liabilities, and transactions during the accounting period.

Where a trustee makes this election, the trustee must, upon request of any beneficiary, make available the detailed information that was used in preparation of the summary accounting.

This change applies to any accounting period beginning on or after January 1, 2022. The ability of a trustee to elect simplified accounting created by this bill is not a mandatory requirement of the Trust Code. Accordingly, a grantor can, when creating the terms of the trust, limit or prohibit the trustee from taking this option and thereby compel comprehensive annual accounting.

Notices from a Trust by Electronic Means (Section 3)

The bill clarifies that e-mail may be used as an optional form of notice from a trust to an interested person.

The bill also, for family trust companies, licensed family trust companies, or foreign licensed family trust companies, specifies that the notice can be in an attachment to the e-mail or a hyperlink in the e-mail. Any necessary user name, password, or specific instructions must be furnished to or made available to the person receiving notice by e-mail. Such service would not, under the provisions of the bill, be subject to the electronic service requirements currently provided under 736.109(3), F.S., which include, obtaining written authorization from recipients, providing an annual notice of legal rights and applicable statutes of limitation, and the maintenance of access to the document for 4 years.

Representation of Future Beneficiaries (Section 4)

The bill expands the authority of a parent to represent and bind the parent's minor child and any unborn child to also give parents the authority to represent and bind an unborn child or unborn descendant, but only if a guardian has not been appointed for the child or descendant.

Life of a Noncharitable Trust (Section 5)

The bill provides that a noncharitable trust may exist up to 1,000 years.

Grantor Trust Reimbursement (Section 8)

The bill expands application of the grantor trust reimbursement for income tax liability to add that a trustee of a foreign trust that has a principal place of administration within the state may agree to grantor trust reimbursement.

Effective Date (Section 9)

The bill takes effect July 1, 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 revenues as specified in Article 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1368 appears to simplify trust administration relating to family trust companies, licensed family trust companies, or foreign licensed family trust companies and thus could lower the costs that these entities incur while operating in Florida. In addition, the extending of the allowable life of trusts in Florida may encourage more trusts to be established in the state.

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: 689.225, 736.0105, 736.0109, 736.0303, 736.0409, 736.0813, 736.08135, and 736.08145.

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 Banking and Insurance on February 8, 2022:
The committee substitute amended the bill to:

- Revise exceptions created in the bill regarding to the mandatory comprehensive annual accounting requirements and makes such exceptions only apply to family trust companies, licensed family trust companies, or foreign licensed family trust companies;
- Revise requirements for the electronic sending of notices; and
- Make technical changes.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Gruters

597-02839A-22 20221368c1

A bill to be entitled

An act relating to trusts; amending s. 689.225, F.S.; revising criteria for application of the rule against perpetuities to trusts created on or after a specified date; amending s. 736.0105, F.S.; specifying that the terms of a trust do not prevail over a trustee's duty to account to qualified beneficiaries under certain circumstances; amending s. 736.0109, F.S.; clarifying circumstances under which notice, or the sending of a document, to a person under the Florida Trust Code is deemed satisfied; authorizing certain trust companies that are trustees to use specified methods for providing notice or sending a document; specifying when such notice or document is deemed sent; amending s. 736.0303, F.S.; specifying circumstances under which a parent may represent and bind the unborn descendants of his or her unborn child or the minor or unborn descendants of his or her minor child; amending s. 736.0409, F.S.; revising the timeframe for which certain noncharitable trusts may be enforced; amending s. 736.0813, F.S.; providing that the terms of a trust may permit for accounting to the qualified beneficiaries only under certain circumstances; providing construction; amending s. 736.08135, F.S.; providing an alternate procedure for trust accountings for specified trustees under certain circumstances; specifying requirements and applicability; amending s. 736.08145, F.S.; clarifying the application of law governing grantor trust reimbursement; providing an

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

597-02839A-22 20221368c1

effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 689.225, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

689.225 Statutory rule against perpetuities.—

(2) STATEMENT OF THE RULE.—

(f) As to any trust created after December 31, 2000, through June 30, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 360 years in place of "90 years" in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

(g) As to any trust created on or after July 1, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 1,000 years in place of "90 years" in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

Section 2. Paragraph (s) of subsection (2) of section 736.0105, Florida Statutes, is amended to read:

736.0105 Default and mandatory rules.—

(2) The terms of a trust prevail over any provision of this code except:

(s) The duty under s. 736.0813(1)(c) and (d) to provide a

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

complete copy of the trust instrument and to account to qualified beneficiaries except as otherwise provided in s. 736.0813(1)(d).

Section 3. Present subsections (4), (5), and (6) of section 736.0109, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, a new subsection (4) is added to that section, and subsection (1) and present subsection (4) of that section are amended, to read:

736.0109 Methods and waiver of notice.—

(1) Notice to a person under this code or the sending of a document to a person under this code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, a properly directed facsimile or other electronic message, including e-mail, or posting on a secure electronic account or website in accordance with subsection (3).

(4) Notwithstanding subsection (3), a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, that is a trustee of a trust may use any permissible method for providing notice or for sending a document specified in subsection (1) or may send a properly directed e-mail that contains an attached notice or document or contains a hyperlink through which the recipient can view the notice or document as a permissible method of providing notice or sending a document. For purposes of this subsection, such notice or document sent by e-mail is deemed to have been

sent if any username, password, or other specific instructions needed to access the notice or document are communicated to the recipient beforehand or contemporaneously with the sending of the e-mail message containing the notice, document, or hyperlink, or upon the request of the recipient.

(5)~~(4)~~ Notice to a person under this code, or the sending of a document to a person under this code electronically ~~by electronic message~~, is complete when ~~the document is~~ sent.

(a) An electronic message is presumed received on the date that the message is sent.

(b) If the sender has knowledge that an electronic message did not reach the recipient, the electronic message is deemed to have not been received. The sender has the burden to prove that another copy of the notice or document was sent by electronic message or by other means authorized by this section.

Section 4. Subsection (5) of section 736.0303, Florida Statutes, is amended to read:

736.0303 Representation by fiduciaries and parents.—To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(5) A parent may represent and bind the parent's unborn child and the unborn descendants of such unborn child, or the parent's minor child and the minor or unborn descendants of such minor child, if a guardian of the property for the unborn child, minor child, or such child's descendants has not been appointed.

Section 5. Subsection (1) of section 736.0409, Florida Statutes, is amended to read:

736.0409 Noncharitable trust without ascertainable

beneficiary.—Except as otherwise provided in s. 736.0408 or by another provision of law, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 1,000 ~~21~~ years.

Section 6. Paragraph (d) of subsection (1) of section 736.0813, Florida Statutes, is amended to read:

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee. Notwithstanding s. 736.0105 or the duties under this paragraph, if a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, is a trustee of an irrevocable trust, the terms of the trust may permit for accounting to the qualified beneficiaries only at the termination of the trust; upon the removal, resignation, or other event resulting in a trustee ceasing to serve as a trustee; or upon demand of a qualified beneficiary or the representative of a qualified beneficiary. This paragraph may not be construed to prohibit a trustee that

is a family trust company, licensed family trust company, or foreign licensed family trust company from voluntarily accounting to the qualified beneficiaries annually or at other times selected by such trustee.

Paragraphs (a) and (b) do not apply to an irrevocable trust created before the effective date of this code, or to a revocable trust that becomes irrevocable before the effective date of this code. Paragraph (a) does not apply to a trustee who accepts a trusteeship before the effective date of this code.

Section 7. Present subsection (3) of section 736.08135, Florida Statutes, is redesignated as subsection (4) and amended, and a new subsection (3) is added to that section, to read:

736.08135 Trust accountings.—

(3) Notwithstanding subsections (1) and (2), if a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, is a trustee of the trust, such trustee may elect, for any accounting period, to provide the qualified beneficiaries with all of the following information:

(a) A notice stating that the trustee has made an election to provide the information described in this subsection.

(b) The information required by paragraph (2)(a) and, if applicable, the information required by paragraph (2)(f).

(c) A financial statement for the trust which summarizes the information provided pursuant to paragraphs (2)(b)-(e). The financial statement must contain sufficient information to put the beneficiary on notice of the trust's comprehensive assets and liabilities as well as of the transactions occurring during

the accounting period. A financial statement that reports a summary of the comprehensive assets and liabilities at the beginning and end of the accounting period and the aggregate amounts of all cash and property transactions, gains, losses, receipts, expenses, disbursements, distributions, accruals, or allowances occurring within the accounting period for each category of assets and liabilities meets the requirements of this paragraph.

For the purposes of this chapter, a financial statement that a trustee provides to a beneficiary of a trust under this subsection is deemed to be a trust accounting. Any trustee that makes the election provided in this subsection shall, upon request of any beneficiary made within the limitations period under s. 736.1008, make available the detailed information necessary for preparation of the financial statement to the beneficiary within 30 days after the date of such request, including providing copies of the requested information. A request by a beneficiary for the detailed information necessary for the preparation of the financial statement tolls the running of any applicable limitations period until the detailed information is made available to the beneficiary.

(4)~~(3)~~ Subsections (1) and (2) govern the form and content of all trust accountings rendered for any accounting periods beginning on or after January 1, 2003, and all trust accountings rendered on or after July 1, 2018. The election provided in subsection (3) for trusts for which a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, is a trustee is available for

any accounting periods beginning on or after July 1, 2022. This subsection does not affect the beginning period from which a trustee is required to render a trust accounting.

Section 8. Subsection (2) of section 736.08145, Florida Statutes, is amended to read:

736.08145 Grantor trust reimbursement.—

(2) This section applies to all trusts that are governed by the laws of this state or that have a principal place of administration within this state, whether created on, before, or after July 1, 2020, unless:

(a) The trustee provides written notification that the trustee intends to irrevocably elect out of the application of this section, at least 60 days before the effective date of such election, to the person treated as the owner of all or a portion of the trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law and to all persons who have the ability to remove and replace the trustee.

(b) Applying this section would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, including a federal tax exclusion or deduction, which was originally claimed or could have been claimed for the contribution, including:

1. An exclusion under s. 2503(b) or s. 2503(c) of the Internal Revenue Code;

2. A marital deduction under s. 2056, s. 2056A, or s. 2523 of the Internal Revenue Code;

3. A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the Internal Revenue Code; or

4. Direct skip treatment under s. 2642(c) of the Internal

Revenue Code.

Section 9. This act shall take effect July 1, 2022.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1380
INTRODUCER:	Rules Committee and Senator Rodriguez
SUBJECT:	Real Property Rights
DATE:	February 16, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Favorable**
2.	Hackett	Ryon	CA	**Favorable**
3.	Bond	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1380 amends laws regarding restrictions on the use of real property. The bill limits how certain older real estate covenants or restrictions apply in a manner that protects real property rights and honors zoning requirements and conditions of a building or development permit. The bill also allows a property owner the right to establish parking rules and rates applicable to the owner's property.

The Marketable Record Title Act (MRTA) simplifies property transactions and modernizes land use by eliminating property rights that are more than 30 years old and predate the root of the title of the property in question. There are, however, numerous exceptions to MRTA whereby a property right is not extinguished by MRTA. The bill amends MRTA to:

- Modify an exception to extinguishment to require that a general reference to a prior right must include an affirmative statement of intent to preserve such property right.
- Specify that MRTA may extinguish a covenant or restriction related to a zoning requirement, building permit, or development permit. However, this will not extinguish the underlying zoning or building codes or ordinances; nor will it extinguish a covenant or restriction that says on its first page that it was required by local codes.
- Allow revitalization of a covenant or restriction that had been required by a government agency as a condition of a development permit.

A person who wishes to protect a property interest potentially extinguished by the change to MRTA has until July 1, 2023 to file a Statement of Marketable Title Action in the public records in order to preserve the property interest.

The bill provides that the owner or operator of a private property used for motor vehicle parking may establish rules, rates, and fines that govern private persons parking motor vehicles on such private property. A county or municipality may not enact an ordinance or a regulation restricting or prohibiting a right of a private property owner or operator to establish rules, rates, and fines governing parking on the private property. The bill requires a specific notation on any invoice.

The bill is effective upon becoming law.

II. Present Situation:

The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 "to simplify conveyances of real property, stabilize titles, and give certainty to land ownership."[1,2] Specifically, MRTA extinguishes most rights in real property that are more than 30 years old based on the date of the root of the title. The root of title "means any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded."[3] Any person who has been vested with any estate in land of record for 30 years or more has a marketable record title, free and clear of most claims or encumbrances against the land that occurred prior to that record title. This allows a prospective buyer, for example, to rely on the first title transaction that occurred more than 30 years ago, together with all title transactions to date, as opposed to searching through decades of possible title transactions. Specifically, MRTA extinguishes the following rights, subject to exceptions:

> [A]ll estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.[4]

MRTA includes a number of exceptions—real property rights that MRTA expressly does not extinguish even if the rights were created in a pre-root instrument. One exception provides that MRTA does not extinguish any property right or title defect disclosed in an instrument recorded in the chain of title from the root forward. However, a general reference to the right or defect is insufficient notice to the title examiner, the reference must be made to the book and page, or to the name of the recorded plat.[5]

Section 712.04, F.S., lists the real property interests that are extinguished where MRTA applies. Unless one of the exceptions of s. 712.03, F.S., applies, a marketable record title is free and clear

[1] *Save Calusa Trust v. St. Andrews Holdings, Ltd.,* 193 So. 3d 910, 914 (Fla. 3d DCA 2016).
[2] The Marketable Record Title Act is ch. 712, F.S.
[3] Section 712.01(6), F.S.
[4] Section 712.04, F.S. The exceptions are set forth at s. 712.03, F.S.
[5] Section 712.03(1), F.S.

of all estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.

Property owners, particularly those with recorded covenants and restrictions designed to preserve the character of the neighborhood, were often dismayed in the past when they discovered that their neighborhood covenants and restrictions had been invalidated by the operation of MRTA. In response, MRTA was amended to allow for covenant revitalization. Different procedures apply, depending upon whether the covenants created a homeowners' association.
Section 712.12, F.S., governs covenant or restriction revitalization by parcel owners not subject to a homeowners' association. It does not apply to a covenant or restriction required by a governmental agency as a condition of a development permit.

Save Calusa Trust

In *Save Calusa Trust v. St. Andrews Holdings, Ltd.,* 193 So. 3d 910 (Fla. 3d DCA 2016), the court addressed the issue of "whether a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is a title interest subject to extinguishment by MRTA."[6] The court held that the 99-year restrictive covenant was not a title interest under MRTA, and thus was not subject to extinguishment by MRTA. The court reasoned that the restrictive covenant in question was an inseparable part of a governmental action to rezone the property at issue. The court concluded that, based on MRTA's language and case law, MRTA did not extinguish zoning regulations, including the one at issue in the case.[7]

Power of Local Governments to Enact Ordinances

The State Constitution grants local governments broad authority to take actions furthering citizens' health, welfare, safety, and quality of life. This "home rule" authority includes legislative powers to enact local laws. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[8] Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.[9] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.[10]

The home rule power may be limited by the state. State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute. A local government enactment may be found inconsistent with state law if (1) the

[6] *Id*. at 914. The restrictive covenant at issue required the owner of a golf course, as a prerequisite to redeveloping the property, to have the consent of 75 percent of the homeowners whose homes were in a ring around the course.
[7] *Id*. at 915-16.
[8] FLA. CONST. art. VIII, s. 1(f).
[9] FLA. CONST. art. VIII, s. 1(g).
[10] FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.[11]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[12] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[13]

Implied preemption is a legal doctrine that addresses situations in which the Legislature has not expressly preempted an area but, for all intents and purposes, the area is dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.[14]

In cases determining the validity of ordinances enacted in the face of state preemption, such ordinances are found null and void.[15]

III. Effect of Proposed Changes:

Section 1 of the bill amends the exception to MRTA at s. 712.03(1), F.S., for real property rights or title defects referenced in an instrument recorded after the root of title, to provide that such instrument is not extinguished by MRTA if it either:

- Specifically references the official records book and page, instrument number, or plat name, of the pre-root instrument; or
- Generally references the estate, interest, easement or use restriction, together with an affirmative statement of intent that the property is subject to such estate, interest, easement or use restriction.

Section 2 of the bill amends the scope of real property rights that may be extinguished by MRTA, at s. 712.04, F.S., to specifically include covenants and restrictions, including any covenant or restriction that depends upon a zoning requirement, building permit, or development permit.

Section 2 also creates two exceptions to the otherwise broad scope of s. 712.04, F.S., to provide that MRTA does not alter or invalidate:

- A comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded in the official records; or

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[11] James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited Jan. 18, 2022).

[12] *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).

[13] *Mulligan*, 934 So. 2d at 1243.

[14] Wolf and Bolinder, *supra*.

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

- Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval.

Section 3 amends s. 712.12, F.S., to allow covenant or restriction revitalization by parcel owners not subject to a homeowners' association where such covenant or restriction was required by a governmental agency as a condition of a development permit.

Section 4 creates s. 715.075, F.S., to provide that the owner or operator of a private property used for motor vehicle parking may establish rules, rates, and fines that govern private persons parking motor vehicles on such private property. Such rules and rates may include parking charges and fines for violating the property owner's or operator's rules. Any private invoice for rates or fines issued for parking on private land must include the following statement in uppercase type:

> THIS INVOICE IS PRIVATELY ISSUED, IS NOT ISSUED BY A GOVERNMENTAL AUTHORITY, AND IS NOT SUBJECT TO CRIMINAL PENALTIES.

The new section also creates a local government preemption. A county or municipality may not enact an ordinance or a regulation restricting or prohibiting a right of a private property owner or operator to establish rules, rates, and fines governing parking on the private property.

Section 5 provides an affirmative statement to declare that the amendments made to ss. 712.03, 712.04, and 712.12, F.S., pursuant to this bill are to provide clarification to already existing law. This clarification applies to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted after the effective date of the bill.

Section 6 requires that an individual who seeks to avoid losing a property interest because of the changes to MRTA in this bill file a notice in the public records no later than the earlier of the expiration of the interest or July 1, 2023. The form of notice is governed by s. 712.06, F.S.[16]

Section 7 directs the Division of Law Revision to replace any language in the bill regarding "the effective date of this act" to the date that the bill becomes law.

Section 8 provides that the bill is effective upon becoming law.

[16] Section 712.06, F.S., requires that a notice must contain name and address of the claimant, name and address of the owner, legal description of the affected land, a statement of the legal claim, and the recording information for the document supporting the claim. The notice must be executed and recorded the same as a deed.

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.

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:

SB 1380 does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 712.03, 712.04, and 712.12.

This bill creates section 715.075 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 15, 2022:
The committee substitute adds a required notice to invoices for parking on private property.

B. Amendments:

None.

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

280360

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete line 104

and insert:

fines for violating the property owner's or operator's rules. An invoice for rates or fines issued under this section must include the following statement in uppercase type:

THIS INVOICE IS PRIVATELY ISSUED, IS NOT ISSUED BY A GOVERNMENTAL AUTHORITY, AND IS NOT SUBJECT TO CRIMINAL PENALTIES.

280360

12
13 ================ T I T L E A M E N D M E N T ================
14 And the title is amended as follows:
15 Delete line 12
16 and insert:
17 private persons parking on the property; requiring
18 certain invoices to have a specified statement;
19 prohibiting

By Senator Rodriguez

39-01426-22 20221380__

A bill to be entitled

An act relating to real property rights; amending s. 712.03, F.S.; revising rights that are not affected or extinguished by marketable record titles; amending s. 712.04, F.S.; revising the types of interests extinguished by marketable record titles; providing construction; amending s. 712.12, F.S.; revising the definition of the term "covenant or restriction"; creating s. 715.075, F.S.; authorizing owners or operators of private property used for motor vehicle parking to establish rules, rates, and fines governing private persons parking on the property; prohibiting counties and municipalities from enacting any ordinance or regulation attempting to restrict or prohibit the owner or operator from adopting such rules, rates, or fines; providing that any ordinance or regulation making such attempt is a violation of this act and is null and void; providing applicability; requiring persons with certain interests in land which may be extinguished by the act to file a specified notice to preserve such interests; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Subsection (1) of section 712.03, Florida Statutes, is amended to read:

712.03 Exceptions to marketability.—Such marketable record

39-01426-22 20221380__

title shall not affect or extinguish the following rights:

(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title, ~~;~~ provided~~, however,~~ that in the muniments of title those estates, interests, easements, or use restrictions created before the root of title are preserved by identification in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates, interests, easements, or use restrictions created before the root of title as identified by the official records book and page or instrument number ~~a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests~~; subject, however, to ~~the provisions of~~ subsection (5).

Section 2. Section 712.04, Florida Statutes, is amended to read:

712.04 Interests extinguished by marketable record title.—Subject to s. 712.03, a marketable record title is free and clear of all estates, interests, claims, covenants, restrictions, or charges, the existence of which depends upon any act, title transaction, event, zoning requirement, building or development permit, or omission that occurred before the

effective date of the root of title. Except as provided in s. 712.03, all such estates, interests, claims, covenants, restrictions, or charges, however denominated, whether they are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, natural or corporate, or private or governmental, are declared to be null and void. However, this chapter does not affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title. This section may not be construed to alter or invalidate:

(1) A comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded in the official records; or

(2) Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval.

Section 3. Paragraph (b) of subsection (1) of section 712.12, Florida Statutes, is amended to read:

712.12 Covenant or restriction revitalization by parcel owners not subject to a homeowners' association.—

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

(b) "Covenant or restriction" means any agreement or limitation ~~imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is~~ contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.

Section 4. Section 715.075, Florida Statutes, is created to read:

715.075 Vehicles parked on private property; rules and rates authorized.—

(1) The owner or operator of a private property used for motor vehicle parking may establish rules, rates, and fines that govern private persons parking motor vehicles on such private property. Such rules and rates may include parking charges and fines for violating the property owner's or operator's rules.

(2) A county or municipality may not enact an ordinance or a regulation restricting or prohibiting a right of a private property owner or operator established under subsection (1). Any such ordinance or regulation is a violation of this section and is null and void.

Section 5. The amendments to ss. 712.03, 712.04, and 712.12, Florida Statutes, in this act are intended to clarify existing law, are remedial in nature, and apply to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted before, on, or after the effective date of this act.

Section 6. A person with an interest in land which may

potentially be extinguished by this act, and whose interest has not been extinguished before July 1, 2022, must file a notice pursuant to s. 712.06, Florida Statutes, by July 1, 2023, to preserve such interest.

Section 7. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 8. This act shall take effect upon becoming a law.

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 8, 2022

I respectfully request that SB 1380, relating to Real Property Rights, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

This bill revises rights that are not affected or extinguished by marketable record titles; revises the types of interests extinguished by marketable record titles; authorizing owners or operators of private property used for motor vehicle parking to establish rules, rates, and fines governing private persons parking on the property; prohibiting counties and municipalities from enacting any ordinance or regulation attempting to restrict or prohibit the owner or operator from adopting such rules, rates, or fines, etc.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

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

Feb 15 22
Meeting Date

Rules
Committee

SB 1380 Amendment
Bill Number or Topic

280360
Amendment Barcode (if applicable)

Name Chris Moya

Phone 850 321 6692

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:
City Parking

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/22
Meeting Date

Rules
Committee

1380
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chris Moya

Phone 8509994100

Address 106 E College
Street

Email Cmoya@deanmead.com

Tall FL 32303
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2022
Meeting Date

Rules
Committee

SB 1380
Bill Number or Topic

Amendment Barcode (if applicable)

Name French Brown

Phone 850-459-0992

Address 106 East College Ave., Suite 1200
Street

Email fbrown@deanmead.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Real Property, Probate, and Trust Law Section of the FL Bar

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1432
INTRODUCER:	Community Affairs Committee, Environment and Natural Resources Committee and Senator Rodriguez
SUBJECT:	Vessel Anchoring
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Fav/CS**
2.	Hackett	Ryon	CA	**Fav/CS**
3.	Carroll	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1432 amends statutes relating to vessel anchoring and mooring. The bill provides that approved and permitted moorings or mooring fields in Monroe County have a 10 year limit on general tenancies and that a sovereign submerged land or other proprietary lease may not prohibit a vessel from an approved and permitted mooring or mooring field, or limit the tenancy of a vessel, because it is an established domicile or a primary residence.

The bill clarifies that Monroe County is designated as an anchoring limitation area in which vessels anchored on waters of the state within the county and within 10 linear nautical miles of a public mooring field or designated anchoring area must:

- Pull anchor,
- Move under their own power, and
- Re-anchor a certain distance away or in a different designated anchoring area.

This must occur at least once every 90 days. The requirement does not apply to vessels moored to approved and permitted moorings, or to domiciled vessels on the waters of the state within the county until at least 100 new moorings are available for public use within 1 mile of Key West Bight City Dock. The bill removes the provisions requiring the county to approve of a certain number of moorings at certain locations.

The bill requires the Fish and Wildlife Conservation Commission to consult with Monroe County and the Florida Keys National Marine Sanctuary to establish designated anchoring areas throughout the county that meet certain criteria.

The bill requires certain vessels on the waters of the state within Monroe County that are equipped with a marine sanitation device to maintain a record of the date and location of each pump-out of the device, which must occur every 30 days, for one year after the date of the pump-out.

II. Present Situation:

Sovereign Submerged Lands

Sovereign submerged lands are owned by the state and include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line,[1] beneath navigable fresh water or tidally-influenced waters.[2] Under the Florida Constitution, the title to all sovereign submerged lands is held by the state in trust for the people.[3] The public generally has the right to use sovereign submerged lands for traditional recreational purposes such as swimming, boating, and fishing.[4]

The Board of Trustees of the Internal Improvement Trust Fund, comprised of the Governor and Cabinet, holds title to all sovereign submerged lands in the state.[5] Chapter 18-21 of the Florida Administrative Code lists the various forms of authorization necessary for specified activities on sovereign submerged lands, including submerged land leases.[6]

Rule 18-21.0041 specifically addresses leases, easements, or consent to use sovereignty submerged lands in Monroe County for multi-slip docking facilities.[7] Certain general policies and specific criteria must be considered in determining whether to allow the use of sovereignty submerged lands for multi-slip docking facilities.[8] The general policies include:

- Taking into account the proximity to and potential adverse impacts on any rare, threatened, or endangered species, or species of special concern, or their habitat, or on any portion of the Florida Reef Tract and other corals;
- Eliminating any adverse impacts on wetland or submerged vegetation or benthic communities;
- Maintaining or enhancing water quality;

[1] Fla. Admin. Code R. 18-21.003(67). The mean high water line is the point on the shore marking the average height of the high waters over a 19-year period, and it is the boundary between the state-owned foreshore (land alternately covered and uncovered by the tide) and the dry area above the mean high water line that is subject to private ownership. *See* ss. 177.27(14), (15) and 177.28(1), F.S.
[2] Fla. Admin. Code R. 18-21.003(67).
[3] FLA. CONST. art. X, s. 11.
[4] Fla. Admin. Code R. 18-21.004(2)(a); *see also 5F, LLC v. Hawthorne*, 317 So. 3d 220, 223 (Fla. 2d DCA 2021) (identifying the same traditional uses).
[5] Sections 253.03 and 253.12(1), F.S.
[6] *See* Fla. Admin. Code R. 18-21.005.
[7] A multi-slip docking facility is a marina or dock designed to moor three or more vessels. Fla. Admin. Code R. 18-20.003(41).
[8] Fla. Admin. Code R. 18-20.003.

- Requiring adequate water depths to avoid dredging and other bottom disturbance;
- Requiring consistency and conformity with local government land use plans, zoning, and other land use or development regulations; and
- Requiring consistency and conformity with the Principles for Guiding Development in the Florida Keys Area of Critical State Concern.[9]

The specific criteria include:

- A moratorium on the approval of all leases of state owned submerged lands for multi-slip docking facilities from Tea Table Channel north to the Monroe County Line;
- No docking facilities that require either dredging or filling to provide access;
- Water depth requirements;
- Requirements for the size of the dock;
- For any new or expanded docking facility for 10 or more boats, a specific lease condition that the lessee shall maintain water quality standards;
- An application review for new docking facilities or expansions to existing facilities to identify ways to improve, mitigate or restore adverse environmental impacts caused by previous activities;
- A lease requirement for all applicants proposing docking facilities designed to moor 10 or more boats;
- Documentation from all applicants to show that there is an economic demand for the number of boat slips requested;
- No benthic communities present where the boat mooring area, turning basins, mooring piles, or other structures are to be located, excepting any main access docks required to cross benthic communities to reach acceptable areas; and
- Special consideration for certain projects to further the commercial fishing village or commercial fishing enterprise zone concept.[10]

Fish and Wildlife Conservation Commission

The Division of Law Enforcement Boating and Waterways Section of the Florida Fish and Wildlife Conservation Commission (FWC) oversees and coordinates statewide regulatory waterway markers to ensure compliance with uniform markers and state boating and resource protection zones for the benefit of all waterway users and fish and wildlife resources in the state.[11] The Boating and Waterways Section takes public input and provides notice of proposed local boating-restricted areas.[12]

FWC's boating laws are enforced by the Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.[13] The

[9] Fla. Admin. Code R. 18-20.003(2).
[10] Fla. Admin. Code R. 18-20.003(3).
[11] FWC, *Waterway Management*, https://myfwc.com/boating/waterway/ (last visited Jan. 11, 2022).
[12] *Id*.
[13] Section 327.70(1), F.S.; *see* s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management

Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.[14] This includes enforcing boating rules and regulations; coordinating boating safety campaigns and education; managing public waters and access to the waters; conducting boating accident investigations; identifying and removing derelict vessels; and investigating vessel theft and title fraud.[15]

Anchoring or Mooring

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.[16] Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.[17]

Local Regulation of Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.[18] Mooring fields must be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters that the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.[19]

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures[20] or live-aboard vessels[21] within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.[22] However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or

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responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

[14] Fish and Wildlife Conservation Commission (FWC), *Boating*, https://myfwc.com/boating/ (last visited Jan. 11, 2022).

[15] FWC, *Law Enforcement*, https://myfwc.com/about/inside-fwc/le/ (last visited Jan. 11, 2022). *See* s. 327.70(1) and (4), F.S.

[16] Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

[17] Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), *available at* https://www.flseagrant.org/wp-content/uploads/anchoring_away_5_12_update_web.pdf (last visited Jan. 11, 2022).

[18] *See* s. 373.118, F.S., and Fla. Admin. Code R. 62-330.420(1).

[19] *See* Fla. Admin. Code R. 62-330.420.

[20] Section 327.02, F.S., defines the term "floating structure" as a "floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such."

[21] Section 327.02, F.S., defines the term "live-aboard vessel" as "a vessel used solely as a residence and not for navigation; a vessel for which a declaration of domicile has been filed; or a vessel used as a residence that does not have an effective means of propulsion for safe navigation. The definition expressly excludes commercial fishing boats."

[22] Section 327.60(3), F.S.

local regulation that regulates the anchoring of vessels, other than live-aboard vessels and non-fishing commercial vessels, outside the marked boundaries of permitted mooring fields.[23]

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.[24] These areas usually have narrow state waterways, residential docking facilities, and significant recreational boating traffic.[25] Counties may create more anchoring limitation areas under certain circumstances.[26]

In 2021, Monroe County was designated as an anchoring limitation area within which a vessel on waters of the state may only be anchored in the same location for a maximum of 90 days.[27] FWC adopts rules to implement this.[28] Notwithstanding FWC's rules, this limitation is only effective for Monroe County until the county approves, permits, and opens new moorings for public use, including at least 250 moorings within 1 mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field.[29]

The following are some exceptions that allow anchoring in an anchoring limitation area:
- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- During certain special events;[30] or
- Certain government, construction, and fishing vessels.[31]

Law enforcement officers or agencies may remove and impound, for up to 48 hours, vessels from anchoring limitation areas when a vessel operator who was previously issued a citation:
- Continues to anchor the vessel in an anchoring limitation area within 12 hours of being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.[32]

In addition to the civil penalty imposed by a citation, a vessel operator whose vessel has been impounded must pay all of the applicable removal and storage fees before the vessel is released.[33]

[23] Section 327.60(2)(f), F.S.
[24] Section 327.4108(1), F.S.
[25] *Id*.
[26] *Id.*; Section 327.4108(2), F.S.
[27] Section 327.4108(3), F.S.
[28] *Id*.
[29] *Id*.
[30] Section 327.4108(3), F.S.; *see also* s. 327.48, F.S.
[31] Section 327.4108(4), F.S.
[32] Section 327.4108(5), F.S.
[33] *Id*.

An owner or operator of a vessel who anchors in an anchoring limitation area commits a noncriminal infraction and is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- $50 for a first offense;
- $100 for a second offense; and
- $250 for a third or subsequent offense.[34]

Section 327.73(1) F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of $500 and no more than 60 days imprisonment.[35]

Marine Sanitation Devices

A marine sanitation device is equipment, other than a toilet, for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.[36] The U.S. Coast Guard categorizes marine sanitation devices into three types:

- Type I devices are flow-through treatment devices that commonly use maceration and disinfection for the treatment of sewage;
- Type II devices are flow-through treatment devices that may employ biological treatment and disinfection;
- Type III devices are typically a holding tank where sewage is stored until it can be discharged shore-side or at sea (beyond three miles from shore).[37]

Raw sewage cannot be discharged from any vessel or any floating structure in Florida waters.[38] All waste from Type III marine sanitation devices must be disposed of in an approved sewage pump-out facility.[39] A violation of the marine sanitation laws is a noncriminal infraction.[40]

No-Discharge Zones

A no-discharge zone is a designated body of water that prohibits the discharge of treated and untreated boat sewage.[41] Within the boundaries of a no-discharge zone, vessel operators are required to retain their sewage discharges onboard for discharge at sea (beyond three miles from the Atlantic shore and beyond nine miles from the Gulf shore) or onshore at a pump-out facility.

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[34] Section 327.73(1)(z), F.S.
[35] Sections 775.082 and 775.083, F.S.
[36] Section 327.02, F.S.
[37] EPA, *Marine Sanitation Devices (MSDs)*, https://www.epa.gov/vessels-marinas-and-ports/marine-sanitation-devices-msds (last visited Jan. 11, 2022).
[38] Section 327.53(4), F.S.
[39] *Id.*
[40] Section 327.53(6)(a), F.S.
[41] U.S. Environmental Protection Agency, *Vessel Sewage Discharges: No-Discharge Zones*, https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-no-discharge-zones (last visited Jan. 12, 2022).

Currently, Florida has three designated no-discharge zones. They are Destin Harbor,[42] the city of Key West waters,[43] and the state waters within the Florida Keys National Marine Sanctuary.[44]

III. Effect of Proposed Changes:

Section 1 amends s. 253.0346, F.S., to provide that notwithstanding any other law, all of the following conditions apply for approved and permitted moorings or mooring fields in Monroe County:

- The general tenancy on a mooring may exceed 12 months, if requested, but not 10 years.
- A sovereign submerged land or other proprietary lease may not prohibit a vessel from an approved and permitted mooring or mooring field or limit a vessel's tenancy because it is a domicile or primary residence.

Section 2 amends s. 327.4108, F.S., to clarify that Monroe County is designated as an anchoring limitation area within which no less than once every 90 days each vessel anchored within Monroe County on waters of the state within 10 linear nautical miles of a public mooring field or a designated anchoring area must pull anchor, be moved from its location using the vessel's propulsion system,[45] and be re-anchored in a new location. The bill provides that the location must be:

- No less than one-half linear nautical mile from the vessel's starting location. A vessel may not be re-anchored within one-half linear nautical mile from the vessel's starting location for at least 90 days; or
- In a different designated anchoring area. A vessel may not be re-anchored in its originating designated anchoring area for at least 90 days after anchoring within a new designated anchoring area.

This relocation requirement does not apply to:

- Vessels moored to approved and permitted moorings and
- Vessels for which domicile has been established, until at least 100 new moorings are available for public use within one mile of the Key West Bight City Dock.

The changes above replace the following provisions:

- Anchoring limitations do not apply to mooring fields; and
- Anchoring limitations are not effective for Monroe County until the county approves, permits, and opens new moorings, including at least 250 moorings within one mile of the Key West Bight City Dock and at least 50 moorings in the Key West Garrison Bight Mooring Field.

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[42] Marine Sanitation Device Standard for Destin Harbor, 53 Fed. Reg. 1,678 (Jan. 21, 1988).
[43] City of Key West No Discharge Zone Determination, 64 Fed. Reg. 46,390 (Aug. 25, 1999).
[44] Regulation to Establish a No Discharge Zone for State Waters within the Boundary of the Florida Keys National Marine Sanctuary, 67 FR 35735 (May 21, 2002). The Florida Keys National Marine Sanctuary protects the 3,800 square miles of waters surrounding the Florida Keys from Miami to the Tortugas. NOAA, *Florida Keys National Marine Sanctuary Boundary*, https://floridakeys.noaa.gov/about/welcome.html?s=about (last visited Jan. 12, 2022).
[45] "Effective means of propulsion for safe navigation" means a vessel, other than a barge, that is equipped with: a functioning motor, controls, and steering system; or rigging and sails that are present and in good working order, and a functioning steering system. Section 327.02(13), F.S.

The bill replaces the Fish and Wildlife Conservation Commission's (FWC's) existing rulemaking authority with the requirement that FWC, in consultation with Monroe County and the Florida Keys National Marine Sanctuary, establish by rule designated anchoring areas throughout the county. The designated anchoring areas must:

- Specify a maximum vessel draft for each area;
- Be created only in locations where the water depth is sufficient to allow vessels whose drafts are less than the area's specified maximum vessel draft to navigate the areas without grounding or stranding;
- Not be located over coral reefs or other sensitive fish or wildlife habitat, to the maximum extent practicable, as determined by FWC;
- Not be located in an area subject to ongoing hazardous water currents or tides or containing navigational hazards; and
- Not be located within navigational channels, setbacks established by the U.S. Army Corps of Engineers associated with federal channels, areas where anchoring is prohibited, or any other lawfully established areas that prohibit anchoring.

The bill provides that all of the following vessels within Monroe County on waters of the state which are equipped with a marine sanitation device, other than a marine composting toilet, that processes and manages human waste using technologies that comply with U.S. Coast Guard requirements must maintain a record of the date and location of each pump-out of the marine sanitation device, which must occur every 30 days, for one year after the date of the pump-out:

- A vessel that has enclosed living spaces or rooms and is used by a person as a dwelling or living space overnight at any time, notwithstanding whether the vessel is also used for navigation; and
- A vessel moored in a public mooring field.

The bill finally clarifies that it may not be construed to prohibit anchoring for less than 90 days within Monroe County.

Section 3 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:

A general law operates universally throughout the state, uniformly on specific subjects throughout the state, or uniformly within a permissible classification, or relates to a state function or entity.[46] Uniform operation of a general law does not require application throughout the state; instead there must be a reasonable possibility that others in the future may meet the criteria of the classification.[47] A general law of local application is a form of general law that operates within only a portion of the state due to a valid classification based on proper distinctions and differences.[48] Article III, Section 10 of the Florida Constitution does not place any burdens or requirements on the Legislature's ability to pass a general law of local application.

A special law is a law that operates on a specific category of people or subjects, and the classification is impermissible or illegal.[49] A special law requires prior publication of a notice of intent to seek passage, or it may become effective after approval by the affected voters in a referendum.[50] A local law is a form of special law that operates only in a specific geographic area or in a classified territory when classification is impermissible or illegal.[51]

The bill amends statutes relating to vessel anchoring and mooring and documentation of marine sanitation device pump-out in Monroe County.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of vessels in Monroe County on waters of the state that are equipped with a marine sanitation device and that have enclosed living spaces or rooms and are used as a dwelling or living space overnight at any time, may experience a negative fiscal impact due to the requirement that they have proof of a marine sanitation device pumpout every 30 days.

C. Government Sector Impact:

None.

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[46] State Affairs Committee and Local Administration and Veterans Affairs Subcommittee, *Local Bills Policies and Procedures Manual 2020-2022*, 1, *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Bill+Policy+and+Procedures+Manual.pdf.
[47] *Id.* at 1-2.
[48] *Id.* at 2.
[49] *Id.* at 2-3.
[50] *Id.* at 3.
[51] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 253.0346 and 327.4108 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on February 2, 2022:
The CS clarifies that the bill may not be construed to prohibit anchoring for less than 90 days within Monroe County.

CS by Environment and Natural Resources on January 18, 2022:
- Clarifies that a bill requirement applies to "linear" nautical miles.
- Adds that the record of the date and location of each marine sanitation device pumpout that certain vessels in Monroe County are required to maintain must also indicate that the vessel was pumped out within the last 30 days.

B. Amendments:

None.

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

By the Committees on Community Affairs; and Environment and Natural Resources; and Senator Rodriguez

578-02650-22 20221432c2

A bill to be entitled

An act relating to vessel anchoring; amending s. 253.0346, F.S.; providing tenancy and lease conditions for approved and permitted mooring and mooring fields in Monroe County; amending s. 327.4108, F.S.; requiring certain anchored vessels in Monroe County to be re-anchored in a new location that meets certain requirements according to a specified timeframe; requiring the Fish and Wildlife Conservation Commission, in consultation with certain entities, to establish designated anchoring areas within the county by rule; providing requirements for the designated anchoring areas; providing an exception for certain domiciled vessels; removing provisions requiring the county to approve a specified number of moorings at specified locations; requiring certain vessels equipped with marine sanitation devices to maintain specified records of such devices; providing construction; providing an effective date.

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

Section 1. Present subsection (4) of section 253.0346, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

253.0346 Lease of sovereignty submerged lands for marinas, boatyards, mooring fields, and marine retailers.—

(4) Notwithstanding any other law, all of the following conditions apply for approved and permitted moorings or mooring fields in Monroe County:

(a) The general tenancy on a mooring may exceed 12 months, if requested, but may not exceed 10 years.

(b) A sovereign submerged land or other proprietary lease may not prohibit a vessel from an approved and permitted mooring or mooring field or limit the tenancy of a vessel because an individual has established it as his or her domicile in accordance with s. 222.17 or because the vessel is an individual's primary residence.

Section 2. Subsection (3) of section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(3)(a) Monroe County is designated as an anchoring limitation area within which no less than once every ~~a vessel on waters of the state may only be anchored in the same location for a maximum of~~ 90 days each vessel anchored within Monroe County on waters of this state within 10 linear nautical miles of a public mooring field or a designated anchoring area must pull anchor and be moved from its location using the vessel's propulsion system and be re-anchored in a new location. The new location must be:

1. No less than one-half linear nautical mile from the vessel's starting location. A vessel may not be re-anchored within one-half linear nautical mile from the vessel's starting location for at least 90 days; or

2. In a different designated anchoring area. A vessel may not be re-anchored in its originating designated anchoring area for at least 90 days after anchoring within a new designated

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

anchoring area. ~~The commission shall adopt rules to implement this subsection.~~

(b) The commission, in consultation with Monroe County and the Florida Keys National Marine Sanctuary, shall establish by rule designated anchoring areas throughout the county. The designated anchoring areas must:

1. Specify a maximum vessel draft for each area;

2. Be created only in locations where the water depth is sufficient to allow vessels whose drafts are less than the area's specified maximum vessel draft to navigate into and out of the areas without grounding or stranding;

3. Not be located over coral reefs or other sensitive fish or wildlife habitat, to the maximum extent practicable, as determined by the commission;

4. Not be located in an area subject to ongoing hazardous water currents or tides or containing navigational hazards; and

5. Not be located within navigational channels, setbacks established by the United States Army Corps of Engineers associated with federal channels, areas where anchoring is prohibited pursuant to s. 327.4109, or any other lawfully established areas that prohibit anchoring.

(c) Paragraph (a) does ~~The anchoring limitations in this subsection do~~ not apply to vessels moored to approved and permitted moorings ~~or mooring fields~~.

(d)~~(c)~~ A vessel upon the waters of this state and within Monroe County for which the owner or occupant has established the vessel as a domicile in accordance with s. 222.17 is exempt from paragraph (a) ~~Notwithstanding the commission rules adopted pursuant to this section, this section is not effective for~~

~~Monroe County~~ until at least 100 ~~the county approves, permits, and opens~~ new moorings are available for public use~~, including at least 250 moorings~~ within 1 mile of the Key West Bight City Dock ~~and at least 50 moorings within the Key West Garrison Bight Mooring Field~~. Until such time, the commission shall designate the area within 1 mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels.

(e) All of the following vessels within Monroe County on waters of this state which are equipped with a marine sanitation device other than a marine composting toilet that processes and manages human waste using technologies that comply with United States Coast Guard requirements must maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout station or waste reception facility for 1 year after the date of the pumpout, and the record must indicate that the vessel was pumped out within the last 30 days:

1. A vessel that:

a. Has enclosed living spaces or rooms; and

b. Is used by a person as a dwelling or living space overnight at any time, notwithstanding whether or not the vessel is also used for navigation.

2. A vessel moored in a public mooring field.

(f) This subsection may not be construed to prohibit anchoring for less than 90 days in areas within Monroe County.

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 2, 2022

I respectfully request that SB 1432, relating to Vessel Anchoring, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

SB 1432 amends statues relating to vessel anchoring and mooring. The bill provides that approved and permitted moorings or mooring fields in Monroe county have a 10 year limit on general tendencies and that a sovereign submerged land or other property lease may not prohibit a vessel from an approved and permitted mooring or mooring field, or limit the tenancy of a vessel, because it is an established domicile or a primary residence.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

Rules
Committee

SB 1432
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kingsley Ross

Phone 850-666-9001

Address 234 Harbour Pt Dr
Street

Email kingsleyRR@hotmail.com

Crawfordville, FL 32327
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

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2-15-22
Meeting Date

Rules
Committee

SB 1432
Bill Number or Topic

Amendment Barcode (if applicable)

Name STAN LOVEDAY

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Email SVDISORDER@GMAIL.COM

Key West FL 33040
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

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S-001 (08/10/2021)

The Florida Senate

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Meeting Date

Rules
Committee

SB 1432
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jack White

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Address 813 Sigsbee Park 5
Street

Email jack@sailingthewinds.com

Key West, FL 33040
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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2/15/22
Meeting Date

Rules
Committee

1432
Bill Number or Topic

Amendment Barcode (if applicable)

Name Lisa Tennyson for Monroe County

Phone 305-509-1709

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Street

Email tennyson-lisa@monroecounty-fl.gov

Key West FL 33040
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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02/15/2022
Meeting Date

Rules Committee
Committee

SB 1432 - Vessel Anchoring
Bill Number or Topic

Amendment Barcode (if applicable)

Name Joseph Salzverg ("Saul's-Verg")

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Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
City of Key West

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules
Committee

1432
Bill Number or Topic

Amendment Barcode (if applicable)

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Street

Email rreyes@capitolgrp.com

Tall FL 32303
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Monroe County

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

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1502
INTRODUCER:	Banking and Insurance Committee and Senator Powell
SUBJECT:	Estates and Trusts
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Fav/CS**
2.	Bond	Cibula	JU	**Favorable**
3.	Schrader	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1502 amends probate and trust law to:

- Make an independent action against a decedent's estate unnecessary by expressly allowing the personal representative of the decedent's estate to be substituted as the defendant to a lawsuit or other proceeding that was initiated against the decedent before his or her death.
- Provide that assets contributed to certain irrevocable trusts for the benefit of a beneficiary spouse for his or her lifetime are not subject to creditor claims by the settlor-spouse's creditors.
- Allow a trust instrument to specify terms for resignation of a trustee provided that specified notice is given.

The effective date of the bill is July 1, 2022.

II. Present Situation:

Probate: In General

Probate is a court supervised process for identifying and gathering the assets of a deceased person (also called a decedent), paying the decedent's debts, and distributing the decedent's

assets to beneficiaries.[1] A personal representative (this is Florida's term for an executor) is appointed to execute this process, and the representative may retain an attorney using funds from the estate.[2] The personal representative may be appointed by a will, or if no such person has been appointed (or if the person does not meet the legal requirements to serve as the personal representative), the court will assign a personal representative. A personal representative may be a real person or a bank or trust company, subject to certain restrictions.[3]

The Florida Probate Code provides the statutory mechanism for the transfer of property from a decedent to persons or entities named in a decedent's will (often called beneficiaries) or to the decedent's legal heirs, if there is no will (called dying intestate). The property transferred via the probate process is called the "estate."[4] Assets subject to probate are those that were solely owned by the decedent at his or her time of death or that were owned by the decedent and one or more co-owners, but such asset lacked a provision for automatic succession of ownership at death.[5] Some assets owned by a decedent may not be probate assets, these potentially include:[6]

- Bank accounts that are pay-on-death, or transferable on death, to another person, or an account jointly held with rights of survivorship;
- Life insurance, annuities, and retirement accounts payable to a beneficiary;
- Homestead property;
- Real property held as joint tenants with another person with a right of survivorship; and
- Property owned by spouses as tenants in common, so long as the other spouse survives.

If the decedent had a will, the property is transferred as directed by the will. If a person dies intestate, the person's property is transferred to heirs according to the laws of intestate succession under chapter 732, F.S.[7]

Personal Representative

In order for the decedent's estate to be transferred to heirs or to the beneficiaries of the will, a petition for administration must be filed with the circuit court. Any interested person may file for administration.[8] The personal representative must provide a notice of administration to various persons, including creditors, family members, beneficiaries, trustees, and persons who may be entitled to exempt property.[9] Those persons must act to contest the will or take other actions within statutory time limits.[10] The personal representative must search for and provide notice, by publication in a newspaper, to creditors of the decedent.[11] This notice must include the name of the decedent, the file number of the estate, the designation and address of the court in which the proceedings are pending, the name and address of the personal representative, the name and

[1] The Florida Bar, *Consumer Pamphlet: Probate in Florida*, What is Probate? *available at* https://www.floridabar.org/public/consumer/pamphlet026/#whatisprobate (last visited Jan 21, 2022).
[2] *Id.* and Section 733.106(2) & (3), F.S.
[3] The Florida Bar, *supra* note 1.
[4] Section 731.201(14), F.S.
[5] The Florida Bar, *supra* note 1.
[6] *Id.*
[7] Section 732.101(1), F.S.
[8] *See* s. 733.202, F.S.
[9] *See* s. 733.212, F.S.
[10] *See* s. 733.212(3), F.S.
[11] *See* s. 733.2121, F.S.

address of the personal representative's attorney, and the date of first publication.[12] Creditors must generally make claims against the estate within three months after the first published notice.[13] As to any creditor required to be served with a copy of the notice to creditors, the deadline is 30 days after the date of service on the creditor.[14]

Creditor Pending Actions

A creditor believing that he or she is entitled to a compensation from the decedent's estate to satisfy a debt of the decedent must file a statement of claim in the probate proceeding with the appropriate clerk of the circuit court.[15] The personal representative, or any other interested person, may file an objection to a creditor's statement of claim.[16] If an objection is filed against a creditor's statement of claim, the creditor must file a separate independent lawsuit against the decedent's estate to pursue the claim within 30 days from the date the objection was served.[17] While this procedure is specified in statute for claims that have yet to be filed upon the decedent's death, there exists some conjecture on how to handle a claim that had been already filed. That is to say, does the already pending lawsuit satisfy the requirement under s. 733.705(5), F.S., that the claimant bring an independent lawsuit? Currently, Florida does not have an established procedure in statute, or in the Florida Probate Rules, for what occurs when a creditor has a pending action against a decedent that was filed prior to the decedent's death. An appellate court ruled on the apparent statutory gap:

> [I]n applying this statute [current s. 733.705(5), F.S.][18] and its similarly worded predecessor statutes, the courts have held that an action pending against a defendant at the time of the defendant's death will suffice to satisfy the "independent action" provision of the statute when there has been a substitution of the personal representative of the decedent's estate, either by timely filed motion for substitution, or by the personal representative's voluntary substitution.[19]

Trusts

Chapter 736, F.S., is the Florida Trust Code (Code). The Code applies to express trusts, charitable or noncharitable, and to trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.[20] Trusts commonly have a testamentary feature, and thus the laws on probate and trusts often intersect.

[12] Section 733.2121(1), F.S.
[13] *See* s. 733.702(1), F.S.
[14] *Id.*
[15] *Id.* and s. 733.702(1), F.S.
[16] The Florida Bar, *supra* note 1 and s. 733.705, F.S.
[17] The Florida Bar, *supra* note 1 and s. 733.705, F.S.
[18] The case cites to s. 733.705(4), F.S., the pertinent language of which is now codified in s. 733.705(5), F.S.
[19] *Lewsadder v. Estate of Lewsadder*, 757 So. 2d 1221, 1224 (Fla. 4th DCA 2000)(internal citations omitted).
[20] Section 736.0102(1), F.S.

Under the Code, a settlor is the person who creates or contributes property to a trust.[21] A beneficiary of a trust is a person who has a present or future beneficial interest in the trust.[22] In general, a trustee is the person who holds the legal title to the property of the trust for the benefit of the trust's beneficiaries. The trustee is granted certain powers over the trust and is subject to certain duties relating to the trust, which are imposed by the terms of the trust, equity jurisprudence, or by statute.[23] Under the Code, "trustee" means the original trustee, and also includes any additional trustee, any successor trustee, and any cotrustee.[24]

Trustees: In General

A trustee derives his or her rules of conduct, extent and limit of authority, and measure of obligation from the trust instrument. Except as otherwise provided in the terms of the trust, the Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of beneficiaries.[25] The terms of a trust prevail over any provision of the Code, except as provided in s. 736.0105(2), F.S., which provides 23 terms that are solely governed by the Code and cannot be changed, waived, or otherwise altered by the terms of the trust.[26] The right of a trustee to resign as trustee for a trust is one of those mandatory provisions.[27]

Resignation of a Trustee

Section 736.0705, F.S., provides that a trustee may resign:

- Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or
- With the approval of the court.

In approving a trustee's resignation, a court may issue orders and impose conditions reasonably necessary for the protection of the trust property. Further, s. 736.0705(3), F.S., provides that any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation. If a resigning trustee is the last remaining trustee for the trust, that trustee still retains the fiduciary duties of trustee, and the powers necessary to protect trust property, until a successor trustee is in place.[28]

Creditor Claims against Trust Settlors

Section 736.0505, F.S., specifies provisions regarding when a creditor may bring a claim against the property in a trust. For revocable trusts, creditors may bring claims against the property in the trust during the settlor's lifetime to the extent the property would not otherwise be exempt by law if owned directly by the settlor. For irrevocable trusts, a creditor may reach only the maximum amount that can be distributed from the trust to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not

[21] Section 736.0103(18), F.S.
[22] Section 736.0103(4), F.S.
[23] 55A Fla. Jur 2d Trusts s. 114.
[24] Section 736.0103(27), F.S.
[25] Section 736.01015(1), F.S.
[26] Section 736.0105(2), F.S.
[27] Section 736.0105(2)(o), F.S.
[28] Section 736.0707(1), F.S.

exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. Essentially, this provision, codified as s. 736.0505(1)(b), F.S., prevents the creation, if one wishes to maintain the trust's creditor protections, of a trust where a settlor is also a beneficiary. An example of this would be where a settlor-spouse sets up a trust for a beneficiary spouse, with the provision that the remainder of the trust assets revert back to the settlor if the beneficiary-spouse pre-deceases the settlor. Florida law currently provides exceptions to this rule for a life estate with power of appointment in the beneficiary-spouse and lifetime irrevocable trusts for which a qualified terminable interest property election has been made.[29]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 733.705, F.S., to codify an existing procedure presently used in Florida courts regarding creditor's pending action against a decedent at the time of the decedent's death. Specifically, the bill provides that if an action or proceeding by the claimant is pending against a decedent at the time of the decedent's death, the requirement to bring an independent action under present s. 733.705(5), F.S., is satisfied if, within 30 days after the filing of an objection to the claim, one of the following conditions are met:

- A motion complying with all applicable rules of procedure is filed, or a similar procedure is initiated, to substitute the proper party (i.e. the decedent's estate instead of the decedent).
- An order substituting the proper party is entered.

The bill also provides a similar procedure for circumstances where the decedent entered into a binding arbitration agreement relating to the claim during that person's lifetime, or if arbitration is required under s. 731.401, F.S., (regarding arbitration of disputes when arbitration provisions are included in the will or trust instrument). The bill, in this circumstance, requires a motion to compel arbitration against the decedent's estate (instead of the decedent). If voluntary arbitration had already commenced at the time of the decedent's death, the bill requires notice of the substitution consistent with the arbitration agreement. If the arbitration was court ordered, a motion for substitution is required.

Section 2 of the bill amends s. 736.0505, F.S., regarding creditor claims against settlors. Currently, if a settlor-spouse creates a lifetime trust for a beneficiary-spouse and names himself or herself as a subsequent beneficiary if the beneficiary-spouse dies, assets in the trust may be available to the settlor-spouse's creditors pursuant to s. 736.0505(1)(b), F.S., during the lifetime of beneficiary-spouse. The bill provides that creditors of a settlor may not attach assets that the settlor previously transferred to an irrevocable trust where the beneficiary of the trust is the settlor's spouse for that spouse's lifetime and the transfers to the trust are completed gifts pursuant to s. 2511 of the Internal Revenue Code of 1986.[30]

---

[29] Section 736.0505(3), F.S.

[30] Principally, a completed gift is when:

- There is an irrevocable transfer by the settlor;
- Who is competent to make the gift;
- Who unmistakably intends to divest themselves of title, dominion, and control over the subject matter of the gift; and
- A donee (i.e. beneficiary) capable of accepting the gift.

See Talge v. United States, 229 F. Supp. 836 (W.D. Mo. 1964), *Finley v. C.I.R.*, 255 F.2d 128 (10th Cir. 1958), and *Jordan v. United States*, 297 F. Supp. 1326 (W.D. Okla. 1969).

Section 3 of the bill amends s. 736.0705, F.S., to add that a trustee may resign pursuant to whatever procedure is set forth in the terms of the trust. In part, this allows a trustee to resign with less than 30 days' notice if the trust instrument allows. A trustee resigning under the terms of a trust must give notice of the resignation to cotrustees. If there are no cotrustees, notice must be given to the successor trustee who has accepted the appointment. If there are no cotrustees or successor trustee, notice must be given to whoever has the authority to appoint a successor trustee. These notice provisions are mandatory.

Section 4 of the bill provides an effective date for the bill of July 1, 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 revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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: 733.705, 736.0705, and 736.0505.

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 Banking and Insurance on January 25, 2022:
Currently, under Florida law, if a settlor-spouse creates a lifetime trust for a beneficiary-spouse and names themselves as a subsequent beneficiary if the beneficiary-spouse dies, assets in the trust may be available to the settlor-spouse's creditors pursuant to s. 736.0505(1)(b), F.S. The CS eliminates this provision for irrevocable trusts (using certain tax exemptions) where the beneficiary is the settlor's spouse for that spouse's lifetime and the transfers to the trust are completed gifts pursuant to s. 2511 of the Internal Revenue Code of 1986.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Powell

A bill to be entitled

An act relating to estates and trusts; amending s. 733.705, F.S.; providing that the requirement for a claimant to file an independent action is satisfied if specified actions are taken; specifying that claimants, not creditors, are given certain priority of claims; amending s. 736.0505, F.S.; revising the types of trusts deemed to have been contributed by a settlor's spouse and not the settlor; amending s. 736.0705, F.S.; providing that a trustee may resign by specified procedure and with notice to certain parties; providing an effective date.

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

Section 1. Subsection (5) of section 733.705, Florida Statutes, is amended to read:

733.705 Payment of and objection to claims.—

(5) The claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action upon the claim, or a declaratory action to establish the validity and amount of an unmatured claim which is not yet due but which is certain to become due in the future, or a declaratory action to establish the validity of a contingent claim upon which no cause of action has accrued on the date of service of an objection and that may or may not become due in the future, unless an extension of this time is agreed to by the personal representative in writing before it expires.

(a) For good cause, the court may extend the time for

filing an action or proceeding after objection is filed. No action or proceeding on the claim may be brought against the personal representative after the time limited above, and the claim is barred without court order.

(b) If an action or proceeding by the claimant is pending against the decedent at the time of the decedent's death, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim:

1. A motion complying with all applicable rules of procedure is filed, or a similar procedure is initiated, to substitute the proper party; or

2. An order substituting the proper party is entered.

(c) If the decedent entered into a binding arbitration agreement relating to the claim during his or her lifetime, or if arbitration is required under s. 731.401, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim, a motion to compel arbitration against the proper party is initiated, as provided for in s. 682.03.

(d) If arbitration was commenced before the decedent's death, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim, notice is given to the proper party. If the arbitration was commenced by order of the court, the notice must take the form of a timely filed motion, complying with all applicable rules of procedure, to substitute the proper party.

(e) If an objection is filed to the claim of any claimant ~~creditor~~ and the claimant ~~creditor~~ brings an action to establish the claim, a judgment establishing the claim shall give it no

priority over claims of the same class to which it belongs.

Section 2. Subsection (3) of section 736.0505, Florida Statutes, is amended to read:

736.0505 Creditors' claims against settlor.—

(3) Subject to the provisions of s. 726.105, for purposes of this section, the assets in:

(a)1. A trust described in s. 2523(e) of the Internal Revenue Code of 1986, as amended~~;, or~~

2. A trust for which the election described in s. 2523(f) of the Internal Revenue Code of 1986, as amended, has been made; or

3. An irrevocable trust not otherwise described in subparagraph 1. or subparagraph 2. in which:

a. The settlor's spouse is a beneficiary as described in s. 736.0103(19)(a) for the lifetime of the settlor's spouse;

b. At no time during the lifetime of the settlor's spouse is the settlor a beneficiary as described in s. 736.0103(19)(a); and

c. Transfers to the trust by the settlor are completed gifts under s. 2511 of the Internal Revenue Code of 1986, as amended; and

(b) Another trust, to the extent that the assets in the other trust are attributable to a trust described in paragraph (a),

shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor.

Section 3. Subsection (1) of section 736.0705, Florida

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

Statutes, is amended to read:

736.0705 Resignation of trustee.—

(1) A trustee may resign in accordance with the procedure set forth in the trust instrument and upon notice to the cotrustees or, if none, to the successor trustee who has accepted the appointment, or, if none, to the person or persons who have the authority to appoint a successor trustee. Notwithstanding any provision of the terms of the trust, a trustee may also resign:

(a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(b) With the approval of the court.

Section 4. This act shall take effect July 1, 2022.

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 8, 2022

I respectfully request that **Senate Bill #1502**, relating to Estates and Trusts, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Bobby Powell
Florida Senate, District 30

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

2.15.22
Meeting Date

Rules
Committee

1502
Bill Number or Topic

Amendment Barcode (if applicable)

Name Stephen Shiver

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Email ss@cardenaspartners.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: TAX Section of the FL BAR

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

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

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

2/15/22
Meeting Date

Rules
Committee

SB 1502
Bill Number or Topic

Amendment Barcode (if applicable)

Name Martha Edenfield

Phone 850-999-4100

Address 106 E. College Ave #1200
Street

Email medenfield@deanmead.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
The Real Property, Probate and Trust Law Section

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

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1526
INTRODUCER:	Banking and Insurance Committee and Senator Boyd
SUBJECT:	Public Records/Annuity Contract Payees
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Fav/CS**
2.	Bond	Cibula	JU	**Favorable**
3.	Schrader	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1526 creates a public records exemption for the personal identifying information and annuity contract numbers of a payee of a structured settlement, and the names of family members, dependents, and beneficiaries of such payee, contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights. Such records are exempt until six months after a final judgment is entered on the transfer application.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Structured Settlements

A structured settlement is an agreement for the periodic payment of damages for personal injuries, the payments of which are established by a settlement or judgment in resolution of a tort claim.[1] This arrangement typically involves one party paying a lump-sum premium to an insurance company to purchase an annuity in the name of the injured victim (the payee). Once the annuity is purchased, the insurance company begins to make periodic payments to the payee for a negotiated period of time.

[1] *See* s. 626.99296(2)(m), F.S.

Instead of making the payments itself, the insurance company may instead decide to assign its payment obligations to a structured settlement company. In exchange for accepting its new payment obligations, the structured settlement company typically receives from the insurance company a lump-sum payment equivalent to the present value of the future payments that are owed to the payee.[2] In order to obtain the necessary liquidity to make its newly-obligated periodic payments, the structured settlement company may use this lump-sum to purchase an annuity from a life insurance company.[3]

After the establishment of a structured settlement, the payee's financial circumstances may change. For example, the payee's periodic payments may be insufficient to pay for an immediate, large financial need, or the payee may see the benefit of a one-time cash infusion to alleviate an incurred obligation. As such, instead of receiving payments under a structured settlement plan, the payee may wish to transfer his or her rights to payments to another organization—known as a transferee—in exchange for a lump sum payout of all or part of the structured settlement. In 2001, the Legislature created s. 626.99296, F.S., to protect recipients of structured settlements during the transfer process.[4] Fundamentally, the statute requires such transfers to receive prior court approval.[5] This approval must be conditioned upon statutorily-enumerated factors, including the payee establishing that the transfer is in their own best interests—taking into account the welfare and support of the payee's dependents.[6]

The transferee contracting to receive structured settlement rights must, at least 20 days before the scheduled hearing on an application for such a transfer, file with the court (and provide to all interested parties) a notice of the proposed transfer and the application for its authorization.[7] Interested parties in this circumstance includes:

- The payee;
- The current party obligated to make continuing periodic payments to the payee;
- An insurer that has issued an annuity contract to be used to fund these periodic payments;
- Any beneficiary irrevocably designated under said annuity contract to receive payments following the payee's death (or, if such designated beneficiary is a minor, the designated beneficiary's parent or guardian); and
- Any other party to the structured settlement who has continuing rights or obligations to receive or make payments pursuant to said settlement.

The notice must include:

- A copy of the transferee's application to the court;
- A copy of the transfer agreement;
- A copy of the required disclosure statement that was provided to the payee;

[2] Gregg D. Polsky and Brant J. Hellwig, *Taxing Structured Settlements*, 51 B.C. L. REV. 39, 41-2 (January 2010).
[3] *Id*.
[4] Section 626.99296, F.S.
[5] *Id*. at subsection (3); and *Rapid Settlements, Ltd. v. Dickerson*, 941 So. 2d 1275, 1276-77 (Fla. 4th DCA 2006) (affirming lower court decision to deny petition, noting that "[t]ransfers of structured settlement rights are regulated by statute and court approval is required before a transfer may go forward.")
[6] Section 626.99296(3), F.S.
[7] *Id.* at (4).

- A statement that interested parties may support, oppose, or otherwise respond to the transferee's application, in person or by counsel, by submitting written comments to the court or by participating in the upcoming hearing; and
- The time and place of the hearing and the manner in which, and the time by which, a written response to the application must be filed in order to be considered by the court.

2016 Revisions to Structured Settlement Law

In 2016, the Legislature revised s. 626.99296, F.S., for the purpose of improving the protection of recipients of structured settlements. As part of these revisions, s. 626.99296, F.S., expanded the information that must be provided to the court about the payee in a transfer application. This information includes:[8]

- The payee's name, age, and county of domicile and the number and ages of the payee's dependents;
- A copy of the transfer agreement;
- A copy of the required disclosure statement that was provided to the payee;
- An explanation of reasons as to why the payee is seeking approval of the proposed transfer; and
- A summary of each of the following:
  - Any transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the 4 years preceding the date of the transfer agreement.
  - Any transfers within the 3 years preceding the date of the transfer agreement made by the payee to any person or entity other than the transferee or an affiliate, or an assignee of a transferee or an affiliate, to the extent such transfers were disclosed to the transferee by the payee in writing or are otherwise actually known by the transferee.
  - Any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, for which an application was denied within the 2 years preceding the date of the transfer agreement.
  - Any proposed transfers by the payee to any person or entity other than the transferee, or an assignee of a transferee or an affiliate, to the extent such proposed transfers were disclosed to the transferee by the payee in writing or are otherwise actually known by the transferee, for which applications were denied within the year preceding the date of the transfer agreement.

Structured Settlement Transfer Fraud

The large amount of personal and financial information about the payee, and, potentially, information about the payee's dependents, that must be submitted to a court to approve a structured settlement transfer may increase the risk of such persons being targeted by fraud relating to the transfer. The potential for such fraud, and the incentives for fraud, is increased by the revelation that:

- The payee potentially has a substantial sum of money due to him or her, with the specified amount due to them contained within the transfer agreement submitted to the court;

[8] *Id.* at (4)(d).

- The payee may be experiencing a financial hardship and have an immediate need for funds (s. 626.99296(4)(d), F.S., requires the submission of an explanation of reasons as to why the payee is seeking approval of the proposed transfer);[9]
- The payee may have recently experienced a serious negative life event, such as a serious injury or the death or serious injury of a loved one, (which could be the reason for the tort claim that gave rise to the structured settlement to begin with);[10] and
- A transfer of funds is imminent.

Fraudulent actors, and other companies engaging in misleading marketing tactics, are able to search court records looking for orders and other information relating to the transfer of a structured settlement. Using the substantial publicly available information, such a person can approach a payee with a customized solicitation via mail, email, text message, or other medium, that appears to be from a legitimate source (such as a court official or representative of the transferee). The person can then engage with the payee and obtain all, or a portion of, that payees structured settlement through fraud or deceit.

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.[11] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[12]

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 adopted in the rules of each house of the Legislature.[13] Florida Rule of General Practice and Judicial Administration 2.420 governs public access to judicial branch records.[14] Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

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[9] Persons having significant debt concerns, experiencing job loss, or having had a negative change in financial status are more likely to be victims of fraud. *See:* Federal Trade Commission, *Consumer Fraud in the United States* (March 2013), *available at:* https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey_0.pdf, and D Shadel, K Pak & J Sauer 2014, *Caught in the scammer's net: Risk factors that may lead to becoming an internet fraud victim*, AARP RESEARCH (2014), *available at:* https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2014/Caught-Scammer-Net-Indiana.doi.10.26419%252Fres.00076.007.pdf.

[10] Persons having experienced recent serious negative life events, such as a serious injury or the death or serious injury of a loved one, are more likely to be victims of fraud. *Id.*

[11] FLA. CONST. art. I, s. 24(a).

[12] *Id*.

[13] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

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

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.[15] 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.[16]

General exemptions from the public records requirements are contained in the Public Records Act.[17] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[18]

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*.[19] 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.[20] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[21]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[22] (the Act), prescribe a legislative review process for newly created or substantially amended[23] public records or open meetings exemptions, with specified exceptions.[24] The Act does not apply to an exemption that applies solely to the State Court System.[25]

Public Records and the Judicial Branch

In *Locke v. Hawkes*, 595 So. 2d 32, at 36-37 (Fla. 1992), the Florida Supreme Court found that the Legislature, and its members, are not an "agency" as specified in the Public Records Act. Thus, the Public Records Act would not apply to records of the Legislature. Further, looking at the history of the legislation, the court found that if the Legislature intended to include itself

[15] FLA. CONST. art. I, s. 24(c).
[16] *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).
[17] *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).
[18] *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).
[19] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[20] *Id.*
[21] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[22] Section 119.15, F.S.
[23] 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.
[24] 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.
[25] Section 119.15(2)(b), F.S.

within the definition of ch. 119, F.S., it would have done so (but it did not).[26] Instead, the court found that the Public Records Act only applied to "executive branch agencies and their officers and to local governmental entities and their officers;" entities over which the Legislature has some means of control. As a coequal branch of government, the judicial branch "is not an 'agency' subject to the supervision or control by another coequal branch of government."[27] Similarly, as with similar reasoning used regarding the Legislature in *Locke*, the Public Records Act would not also apply to judicial records.[28]

However, the judicial branch is required to maintain access to public records pursuant to article 1, section 24(a) of the Florida Constitution.[29] To meet its constitutional obligation, the judicial branch adopted Florida Rule of General Practice and Judicial Administration 2.420 entitled "Public Access to and Protection of Judicial Branch Records" which states that the public is to have access to all records of the judicial branch of government, except as provided in that rule. These exceptions include:

- All records made confidential under the Florida and United States Constitutions and Florida and federal law; and

[26] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

[27] *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995). *See also* FLA. CONST., art. II, s. 3 (providing for the separation of powers between the executive, judicial, and legislative branches; stating "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."). *See also* Florida Attorney General, GOVERNMENT-IN-THE-SUNSHINE MANUAL, A REFERENCE FOR COMPLIANCE WITH FLORIDA'S PUBLIC RECORDS AND OPEN MEETINGS LAWS, *Judiciary* at 11, (Vol. 43, 2021 Ed.), *available at http://myfloridalegal.com/webfiles.nsf/wf/mnos-b9qq79/$file/sunshinemanual.pdf*.

[28] *See Times*, *supra* note 27, which states that "chapter 119 does not apply to judicial records nor to the clerk of the circuit court in his capacity as the court's record keeper."

[29] *See* GOVERNMENT-IN-THE-SUNSHINE MANUAL, *supra* note 27. Even before Article I, section 24 was passed to require access to public records and meetings by all branches of government, the Florida Supreme Court had recognized that access to court proceedings must be safeguarded as open, "public events." *See Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116–19 (Fla. 1988) ("[B]oth civil and criminal court proceedings in Florida are public events and adhere to the well-established common law right of access to court proceedings and records. . . . The reason for openness is basic to our form of government. Public trials are essential to the judicial system's credibility in a free society.") (citing *Craig v. Harney*, 331 U.S. 367, 374 (1947); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980)). *See also* William A. Buzzett and Deborah K. Kearney, *Commentary to 1992 Addition [of FLA. CONST., art. I, s. 24]*, Fla. Stat. Ann. (Westlaw 1992), noting the following history leading to the passage of article I, section 24:

> Florida's public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.
>
> In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

- All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission.

The judiciary may adopt, and has adopted, "legislative statements of policy as part of the rules governing matters within the jurisdiction of the judiciary," including the disclosure or public inspection of court records.[30]

Public Record Exemptions for Certain Court Records and Files

In s. 119.0714(1), F.S., the Legislature has provided that certain information, such as social security numbers[31] and bank account numbers,[32] contained in court records and files should be either exempt or confidential and exempt from the disclosure requirements of the public records laws. Rule of General Practice and Judicial Administration 2.420 has not expressly adopted all of the statutory public records exemptions contained in s. 119.0714, F.S. However, the rule cross-references s. 119.0714, F.S., in several places including:

- Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii), regarding Social Security, bank account, charge, debit, and credit card numbers;
- Fla. R. Jud. Admin. 2.420(d)(1)(B)(xiii), regarding protected information regarding victims of child abuse or sexual offenses; and
- Fla. R. Jud. Admin. 2.420(d)(1)(B)(xxiii), in formation that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 119.0714(1), F.S., to make exempt from public records disclosure requirements, if not already closed by order of a court, the following information in a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights:

- Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2), F.S.; and
- The names of family members, dependents, and beneficiaries of such a payee.

The bill limits this exemption to the pendency of the transfer proceeding and for six months after the final order approving, or not approving, the transfer is entered. The section also provides that this new exemption is subject to the Open Government Sunset Review Act, s. 119.15, F.S., and will be repealed, unless saved from repeal by the Legislature, on October 2, 2027.

Section 2 of the bill provides the public necessity statement, required pursuant to article I, section 24(c) of the State Constitution, for the public records exemption. It states, in part, that recipients of structured settlements have been targets of criminal and fraudulent acts based upon

[30] *See Florida Pub. Co. v. State*, 706 So. 2d 54, 56 (Fla. 1st DCA 1998) (citing *Timmons v. Combs*, 608 So.2d 1, 3 (Fla.1992)). The court in *Florida Pub. Co.*, did, however, decline to rule on whether the courts *must* adopting legislative statements or expressions of policy as part of rules governing matters within the jurisdiction of the judiciary. Rather, the court, only ruled that it is not precluded from doing so.

[31] Section 119.0714(1)(i), F.S.

[32] Section 119.0714(1)(j), F.S.

publicly available identifying information. Further, it states that protecting the personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee outweighs any public benefit that may be derived from the disclosure of such information.

Section 3 of the bill specifies an effective date of the bill of July 1, 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 revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the protection of personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee. This bill exempts only this information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0714 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 Banking and Insurance on January 25, 2022:
The CS narrows the proposed public records exemption to include only court files relating to a proceeding for the approval of the transfer of structured settlement payment rights. It also limits the duration of the exemption to be during the pendency of the transfer proceeding and for six months after a final judgment on the transfer. Finally, the CS revises the public necessity statement for the exemption.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Boyd

597-02318-22 20221526c1

A bill to be entitled

An act relating to public records; amending s. 119.0714, F.S.; providing an exemption from public records requirements for personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee contained in the court records for a proceeding for the approval of the transfer of structured settlement payment rights; limiting such exemption to a specified period; 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. Paragraph (l) is added to subsection (1) of section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(l) Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2) and the names of family members, dependents, and beneficiaries of such payee contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights under s. 626.99296. Such

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

597-02318-22 20221526c1

information shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution during the pendency of the transfer proceeding and for 6 months after the final court order approving, or not approving, the transferee's application. This paragraph 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 necessity that the personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Recipients of structured settlements have been targets of criminal and fraudulent acts based upon publicly available identifying information and are especially vulnerable during transfer proceedings to fraudulent actors purporting to be from legitimate entities. These fraudulent actors may use such information to intercept transfer payments or obtain other sensitive information, such as bank account and social security numbers. The Legislature finds that the harm that may result from the release of personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee outweighs any public benefit that may be derived from the disclosure of such information during the specified period.

Section 3. This act shall take effect July 1, 2022.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR JIM BOYD
21st District

February 10, 2022

Senator Kathleen Passidomo
404 South Monroe Street
402 Senate Office Building
Tallahassee, FL 32399

Dear Madam Chair Passidomo:

I respectfully request CS/SB 1526: Public Records/Annuity Contract Payees, be added to the agenda for the Committee on Rules, at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

Jim Boyd

cc: John Phelps
Cynthia Futch

REPLY TO:
❒ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
❒ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: *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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1552
INTRODUCER:	Senator Gruters
SUBJECT:	Direct-support Organization for the Florida Prepaid College Board
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Brick	Phelps	RC	**Favorable**

I. Summary:

SB 1552 saves from repeal the Stanley G. Tate Florida Prepaid College Foundation, Inc., which is a direct-support organization for the Florida Prepaid College Board created to administer the Florida Prepaid Tuition Scholarship Program and other scholarship programs approved by the Florida Prepaid College Board.

The bill takes effect July 1, 2022.

II. Present Situation:

Citizen Support Organizations and Direct-Support Organizations

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created private entities that are generally required to be non-profit corporations, and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs that are created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.[1] Specifically, the law requires each CSO and DSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:[2]

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;

[1] Chapter 2014-96, L.O.F.
[2] Section 20.058(1), F.S.

- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service (IRS) Return of Organization Exempt from Income Tax form (Form 990).[3]

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.[4] Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the information.[5] If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO or DSO.[6] The contract must also include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.[7]

By August 15 of each year, the agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information provided by the CSO or DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO or DSO.[8]

Lastly, a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization for the CSO or DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature.

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of $100,000 to provide for an annual financial audit of its accounts and records.[9] The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.

Additionally, the Auditor General may conduct audits or other engagements of the accounts and records of the CSO or DSO, pursuant to his or her own authority, or at the direction of the

[3] The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.
[4] Section 20.058(2), F.S.
[5] Section 20.058(4), F.S.
[6] *Id*.
[7] *Id*.
[8] Section 20.058(3), F.S.
[9] The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is $300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

Legislative Auditing Committee.[10] The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.[11]

CSO and DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.[12]

Florida Prepaid College Board

The Florida Prepaid College Board (Board) administers the Stanley G. Tate Florida Prepaid College Program (prepaid program) and the Florida College Savings Program (savings program), and performs other specified essential governmental functions.[13]

Stanley G. Tate Florida Prepaid College Foundation

In 1989, the Legislature authorized the Board to establish a DSO.[14] The Board established the Florida Prepaid College Foundation, Inc.,[15] (Foundation) in 1990 as a public/private partnership to provide scholarships to students who may not have otherwise had the opportunity to go to college.[16]

The Foundation administers the Florida Prepaid Tuition Scholarship Program (Scholarship Tuition for At-Risk Students, or STARS Program).[17] This program provides economically disadvantaged youth with prepaid postsecondary tuition scholarships.[18] The Foundation has

[10] Section 11.45(3)(d), F.S.
[11] *Id*.
[12] Section 112.3251, F.S.
[13] Section 1009.971(1), F.S. *See* also ss. 1009.97-1009.988, F.S. The Board is assigned to and administratively housed within the State Board of Administration, but it independently exercises specified powers and duties. The Board consists of seven members, composed of the Attorney General, the Chief Financial Officer, the Chancellor of the State University System, the Chancellor of the Division of Florida Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. Section 1009.971(1) and (2), F.S.
[14] Section 1, ch. 89-316, L.O.F.
[15] The Foundation was renamed the Stanley G. Tate Florida Prepaid College Foundation, Inc., in 2012. *See* Florida Prepaid College Foundation, *Amendment and Name Change* (2012), *available at* http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (search for "Florida Prepaid College Foundation", then follow "Florida Prepaid College Foundation, Inc." hyperlink).
[16] Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, *available at* https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf, at 6.
[17] Sections 1009.983(8), 1009.984, F.S.; Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, *available at* https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf, at 10.
[18] Section 1009.984, F.S.

established additional scholarship programs, which include the Black History Month Scholarship and the Hispanic Heritage Month Scholarship.[19]

The Board is required to certify that the Foundation operates in a manner consistent with the goals of the Board and in the best interest of the state.[20] The Foundation is required to be:[21]

- A Florida not-for-profit corporation registered, incorporated, organized, and operated in compliance with chapter 617.
- Organized exclusively to receive, hold, invest, and administer property and to make expenditures on behalf of the board.

The Foundation has awarded more than 51,000 Florida Prepaid College Plan scholarships, and more than 32,600 Foundation scholarship recipients have gone to college using their benefits.[22] The STARS Program remains the Foundation's largest initiative, representing 80 percent of the scholarships purchased by the Foundation.[23]

Legislative Review: Findings and Recommendations

Senate professional staff reviewed documents related to the Foundation for compliance with accountability and authorizing statutes. The Foundation appears to be in compliance with such statutes. Findings and recommendations are summarized below.

The Foundation's Compliance with Accountability Requirements

Requirement: The Foundation is required to incorporate as a Not-for-Profit Corporation.[24]

Finding: The Foundation appears to have met this requirement. The Foundation is listed as an active Florida Not-for-Profit Corporation with the Florida Division of Corporations. All annual reports have been filed going back to April 5, 1995. A copy of each annual report is available online.[25]

Requirement: The Foundation is required to be organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the Board.[26]

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[19] Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, *available at* https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf, at 17.
[20] Section 1009.983(1)(c), F.S.
[21] Section 1009.983(1), F.S.
[22] Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, *available at* https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf, at 4.
[23] *Id*.
[24] Section 1009.983(1)(a), F.S.
[25] Florida Division of Corporations, *Search Records*, *Detail by Entity Name*, http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FLORIDAPREPAIDCOLLEGEFOUNDATIO%20N353070&aggregateId=domnp-n35307-f4bbb7a4-2964-48c1-91c1-0462741579f9&searchTerm=Florida%20Prepaid%20College%20Foundation&listNameOrder=FLORIDAPREPAIDCOLLEGEFOUNDATIO%20N353070 (last visited Jan. 21, 2022).
[26] Section 1009.983(1)(b), F.S.

Finding: The Foundation appears to have met this requirement. The by-laws of the Foundation confirm the Foundation is organized and operated exclusively for the benefit of the Board.[27]

Requirement: The chair of the Board is required to serve as a director of the Foundation. The chair of the Board and the executive director of the Board are required to jointly name, at a minimum, four other individuals to serve as directors of the organization.[28]

Findings: The Foundation meets this requirement. The chair of the Board is also the chair of the Foundation.[29] The Foundation has confirmed that the Foundation complies with the requirement for the appointment of the Foundation's directors.[30]

Requirement: By August 1 of each year, the Foundation must submit the following information to the Board:[31]

- The name, mailing address, telephone number, and website address of the Foundation.
- The statutory authority or executive order pursuant to which the Foundation was created.
- A brief description of the mission of, and results obtained by, the Foundation.
- A brief description of the plans of the Foundation for the next 3 fiscal years.
- A copy of the Foundation's code of ethics.
- A copy of the Foundation's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

Finding: The Foundation's annual disclosure contains all required information.[32] However, the Internal Revenue Service has determined that the Foundation is exempt from the requirement of filing Form 990.[33]

Requirement: The Board must make the information that is required in the annual disclosure report available to the public through the Board's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.[34]

Finding: The Board's website includes a link to the Foundation's website and includes the Foundation's required annual disclosure report.[35]

Requirement: The Foundation's ethics code must be conspicuously posted on the Foundation's website and address the following standards of conduct:[36]

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[27] Stanley G. Tate Florida Prepaid College Foundation, *By-Laws of the Florida Prepaid College Foundation, Inc.* (2020), at 2.
[28] Section 1009.983(5), F.S.
[29] *See* Florida Prepaid College Foundation, *Board Members*, https://www.floridaprepaidcollegefoundation.com/about-us/board-members-staff/ (last visited Jan. 21, 2022), *and* Florida Prepaid College Board, *Florida Prepaid College Board Members*, https://www.myfloridaprepaid.com/about-us/board-members/ (last visited Jan. 21, 2022).
[30] Email, Florida Prepaid College Board (Sept. 14, 2021).
[31] Section 20.058(1), F.S.
[32] Stanley G. Tate Florida Prepaid College Foundation, *Required Disclosure to s. 20.058, F.S.* (July 21, 2021), *available at* https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/07/2021-Foundation-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.058-Florida-Statutes-1.pdf.
[33] *Id*, at 11.
[34] Section 20.058(2), F.S.
[35] Florida Prepaid College Foundation, *Board Reports & Plans*, https://www.myfloridaprepaid.com/about-us/board-reports/ (last visited Jan. 21, 2022).
[36] Sections 112.313 and 112.3251, F.S.

- Solicitation or acceptance of gifts.
- Unauthorized compensation.
- Voting on salary and expenses.
- Misuse of public position for private gain.
- Disclosure or use of certain information for personal gain.
- Postemployment restrictions.
- Employees holding office.
- Professional and occupational licensing of Foundation board of directors members.

The Foundation's ethics code must address the requirements that a state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss.[37]

Finding: The ethics code adopted by the Foundation is included within the Foundation's annual required disclosure, which is published on the Foundation's website.[38] The published Code of Ethics is the policy of the State Board of Administration but does not appear to address postemployment restrictions of personnel. As authorized by s. 1009.983(6), F.S., however, the Foundation operates solely through services provided by employees of the Board,[39] who are subject as public officers or employees of agencies to the standards of conduct set forth in chapter 112, F.S. In the event the Foundation decides to employ its own personnel, the Foundation must ensure its ethics code satisfies the requirements as set forth in s. 112.3251, F.S.

Requirement: The Foundation must provide for an annual financial audit.[40]

Finding: The Foundation has met this requirement. Each year the Foundation is audited by an independent auditor. Annual audits from 2010 – 2020 are posted on the Foundation's website.[41] The Foundation has submitted the audits to the Auditor General[42] and the Board.[43]

Requirement: By August 15 of each year, the Board must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the OPPAGA the information provided by the Foundation. The report must also include a recommendation by the Board, with supporting rationale, to continue, terminate, or modify the Board's association with the Foundation.[44]

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[37] Sections 112.3251 and 112.3143(2), F.S.
[38] Stanley G. Tate Florida Prepaid College Foundation, *Required Disclosure to s. 20.058, F.S.* (July 21, 2021), *available at* https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/07/2021-Foundation-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.058-Florida-Statutes-1.pdf, at 3.
[39] Email, Florida Prepaid College Board (Sept. 15, 2021).
[40] Section 215.981, F.S.
[41] Stanley G. Tate Florida Prepaid College Foundation, *Financial Statements*, https://www.floridaprepaidcollegefoundation.com/resources/news-publications-and-events/ (last visited Jan. 21, 2022).
[42] Florida Auditor General, *Stanley G. Tate Florida Prepaid College Foundation*, https://flauditor.gov/pages/nonprofit_forprofit%20pages/stanley%20g%20tate%20florida%20prepaid%20college%20foundation.htm (last visited Jan. 21, 2022).
[43] Florida Prepaid College Board, *Board Reports & Plans: Financial Statements* (2020), *available at* https://www.myfloridaprepaid.com/wp-content/uploads/2020-Florida-Prepaid-College-Board-Financial-Statements.pdf at 17.
[44] Section 20.058(3), F.S.

Finding: The Board provided the Foundation's required annual disclosure prior to the August 15 deadline.[45] In the required annual disclosure report the Board recommended continued association with the Foundation.[46]

Requirement: The contract between the Board and the Foundation must be contingent upon the Foundation's submission and posting of information required to be submitted to the Board. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the Foundation within 30 days after its authorizing statute is repealed, the contract is terminated, or the Foundation is dissolved. If the Foundation fails to submit the required information for two consecutive years, the Board chair must terminate any contract between the Board and the Foundation.[47] In addition, the contract must provide for:[48]

- Approval of the articles of incorporation and bylaws of the Foundation by the Board.
- Submission of an annual budget for the approval of the Board. The budget must comply with rules adopted by the Board.
- Certification by the Board that the Foundation is complying with the terms of the contract and in a manner consistent with the goals and purposes of the Board and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the Board.
- The fiscal year of the Foundation, which must begin July 1 of each year and end June 30 of the following year.
- The disclosure of material provisions of the contract and of the distinction between the Board and the Foundation to donors of gifts, contributions, or bequests, and such disclosure on all promotional and fundraising publications.

Finding: The contract between the Board and Foundation, effective December 9, 2021, through December 8, 2026 contains the required language.[49]

Requirement: The Foundation must administer the Florida Prepaid Tuition Scholarship Program and additional scholarship programs supported from escheated funds retained by the Board, provided that any matching funds for such scholarships are obtained solely from the private sector.[50]

Finding: The Foundation administers additional scholarship programs with matching funds obtained solely from the private sector.[51]

Requirement: The Foundation's annual report must include a list of any additional scholarship programs approved by the Board to be administered by the Foundation, including a description of the programs and the amount of escheated funds utilized to fund the programs.[52]

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[45] Email, Florida Prepaid College Board (Sept. 15, 2021).
[46] Florida Prepaid College Foundation, *Required Disclosure to s. 20.058, F.S.* (July 21, 2021), *available at* https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/07/2021-Foundation-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.058-Florida-Statutes-1.pdf, at 2.
[47] Section 20.058(4), F.S.
[48] Section 1009.983(2), F.S.
[49] Florida Prepaid College Board, *Agreement with Florida Prepaid College Foundation, Inc.* (Dec. 8, 2021).
[50] Section 1009.983(8), F.S.
[51] Email, Florida Prepaid College Board (September 14, 2021).
[52] Section 1009.983(8)(b), F.S.

Finding: The Foundation's *2020 Annual Report* describes additional scholarship programs approved by the Board and indicates the amount of escheated funds utilized to fund each program.[53]

Requirement: The Foundation is required to keep confidential the identity of donors who desire to remain anonymous.[54]
Finding: The Foundation confirms it maintains the anonymity of donors who desire to remain anonymous and is thus compliant with this requirement.[55]

III. Effect of Proposed Changes:

SB 1552 saves from repeal the Stanley G. Tate Florida Prepaid College Foundation, Inc., which is a direct-support organization for the Florida Prepaid College Board created to administer the Florida Prepaid Tuition Scholarship Program and other scholarship programs approved by the Florida Prepaid College Board.

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.

[53] Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, *available at* https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf, at 17.
[54] Section 1009.983(4), F.S.
[55] Email, Florida Prepaid College Board (Sept. 14, 2021).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Prepaid College Foundation, Inc. (Foundation) has awarded more than 51,000 Florida Prepaid College Plan scholarships, and more than 32,600 Foundation scholarship recipients have gone to college using their benefits.[56] The continued operation of the Foundation may ensure that students continue to be awarded such scholarships.

C. Government Sector Impact:

The Legislature appropriated $7,000,000 in the 2021 General Appropriation Act to support Foundation scholarships.[57]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.983 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[56] Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Repor*t, *available at* https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf, at 8.
[57] Specific appropriation 67, s. 2, ch. 2021-36, L.O.F.

By Senator Gruters

23-00722-22 20221552__

A bill to be entitled

An act relating to the direct-support organization for the Florida Prepaid College Board; amending s. 1009.983, F.S.; removing the scheduled repeal of the Florida Prepaid College Board's authority to establish a direct-support organization; providing an effective date.

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

Section 1. Subsection (9) of section 1009.983, Florida Statutes, is amended to read:

1009.983 Direct-support organization; authority.—

~~(9) This section is repealed October 1, 2022, unless reviewed and saved from repeal by the Legislature.~~

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

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 28, 2022

I respectfully request that **Senate Bill #1552**, relating to Direct-support Organization for the Florida Prepaid College Board, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Problem Addressed:
SB 1552 saves from repeal the Stanley G. Tate Florida Prepaid College Foundation, Inc., which is a direct-support organization for the Florida Prepaid College Board created to administer the Florida Prepaid Tuition Scholarship Program and other scholarship programs approved by the Florida Prepaid College Board

Please let me know if you have any questions.

Sincerely,

Joe Gruters

Joe Gruters

Cc: John B. Phelps, Staff Director
Tom Yeatman, Deputy Staff Director
Cynthia Futch, Committee Administrative Assistant

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 1564
INTRODUCER:	Rules Committee; Regulated Industries Committee; Commerce and Tourism Committee; and Senator Hutson
SUBJECT:	Telephone Solicitation
DATE:	February 16, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Sharon	Imhof	RI	**Fav/CS**
3.	Harmsen	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Section 501.059, F.S., prohibits telephonic sales calls that:

- Use an automated system for the selection or dialing of telephone numbers or playing a recorded message to a number without the prior express written consent of the called party;
- Fail to transmit the originating telephone number and, when possible, the name of the solicitor; or
- Alter the voice of the caller in order to defraud, confuse, or injure the telephone call recipient.

Section 501.059, F.S., also includes Do-Not-Call provisions, and similar consumer protections.

CS/CS/CS/SB 1564 makes the following changes to s. 501.059, F.S.:

- Narrows the scope of telephonic sales calls that require the called party's prior express written consent to those that are made using an automated system to select *and* dial telephone numbers, play a recorded message, *transmit a text message*, or transmit a prerecorded voicemail.
- Permits signatures obtained via a compliant e-mail, website form, text message, telephone keypress, or voice recording, to serve as the basis of a called party's prior express written consent to receive certain telephonic sales calls that are made using automated systems.

- Allows the use of an automated system for the selection and dialing of telephone numbers with live messages or text messages if made solely in response to an inquiry initiated by the called party. The bill limits this to three calls or messages in response to each inquiry.
- Classifies telephonic sales calls made 120 days or more after the called party's express request for such a call as an unsolicited telephonic sales call.
- Removes telephonic sales calls and text messages that poll or solicit the express of ideas, opinions, or votes from regulation as an unsolicited telephonic sales call subject to the Do-Not-Call list regulations.
- Declares the bill is remedial in nature and applies retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

The bill takes effect upon becoming law.

II. Present Situation:

Unsolicited Phone Calls

Consumers are often inundated with unwanted calls. In Fiscal Year 2021, the Federal Trade Commission (FTC) received 388,227 complaints from Florida consumers about unwanted telephone calls.[1] The Federal Communications Commission (FCC) reports that unwanted calls constitute their top consumer complaint.[2] Unwanted calls can come in many forms, including robocalls,[3] which use an "automatic telephone dialing system"[4] or "autodialer" that plays a recorded message upon connection; "spoofing" or "spoofed calls," which transmit falsified information to a consumer's caller ID to disguise the solicitor's identity; and unwanted telemarketing calls.[5]

State and federal action to combat these issues are limited because there are legitimate and legal uses of this technology. For example, a doctor's office may legally use a robocall to remind someone of an upcoming appointment.[6] Additionally, some solicitors act outside the scope of federal or state enforcement authority.

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[1] Federal Trade Commission, *Do Not Call Data Book 2020* (Nov. 2021), https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2021/dnc_data_book_2021.pdf (last visited Feb. 4, 2022).
[2] Federal Communications Commission, *Stop Unwanted Robocalls and Texts* (Mar. 17, 2021), https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts (last visited Feb. 4, 2022).
[3] The FCC uses the term "robocalls" to refer to prerecorded calls and "also autodialed calls, regardless of whether the call is live or prerecorded." *Stopping Fraudulent Robocall Scams: Can More Be Done?*, Hearing Before the S. Subcomm. on Consumer Protection, Product Safety, and Insurance of the Comm. on Commerce, Science, and Transportation, 130th Cong. (July 10, 2013) (Statement of Eric J. Bash, Associate Chief, Enforcement Bureau, Federal Communications Commission) https://www.govinfo.gov/content/pkg/CHRG-113shrg85765/pdf/CHRG-113shrg85765.pdf (last visited Feb. 4, 2022).
[4] "Automatic telephone dialing system" or "autodialer" refers to equipment capable of producing or storing phone numbers using a random or sequential number generator and can call those numbers. 47 U.S.C. § 227(a)(1).
[5] "Fraudsters have also further exploited caller ID spoofing, which induces the consumer to pick up the phone, while at the same time enabling the scammer to hide its identity and location." *Hearing*, *supra* note 3, at p. 5 (Statement of Lois Greisman, Associate Director, Division of Marketing Practices, Bureau of Consumer Protection).
[6] Federal Communication Commission, Consumer and Governmental Affairs Bureau, *Report on Robocalls* (Feb. 2019), CG Docket No. 17-59, https://www.fcc.gov/document/fcc-issues-report-illegal-robocalls (last visited Feb. 4, 2022). *See also*, FCC, *supra* note 2.

Florida Senate Bill 1120 (2021)

In 2021, the Florida Legislature updated s. 501.059, F.S., and the Florida Telemarketing Act,[7] to further address some of these issues facing consumers.[8]

Current law requires all sales telephone calls, text messages, and direct-to-voicemail transmissions made with an autodialer that is capable of either selecting *or* dialing the recipient's number to have the receiving consumer's prior express written consent.[9] Additionally, such calls require prior consent if they will play a recorded message upon connection with the recipient. Aggrieved parties can sue to recover actual monetary damages or $500, plus attorney fees and costs.[10] Additionally, a court may triple these damages if the underlying violation is willfully or knowingly performed.

One entity reports that this 2021 change to the Florida Telemarketing Act has resulted in at least 100 class action complaints against those who make telephone sales calls since July 2021.[11]

Florida Law (Section 501.059, F.S.)

Generally

Section 501.059, F.S., governs telephone solicitors, i.e., persons who make or cause to be made telephonic sales calls in this state.[12] A telephonic sales call includes solicitations via telephone calls, text messages, and direct-to-voicemail transmissions.[13]

For example, s. 501.059, F.S., requires telephone solicitors to:

- Identify themselves and the businesses on whose behalf they make a telephone solicitation call immediately upon making contact with the person called;
- Adhere to the Do Not Call lists maintained by the Florida Department of Agriculture Consumer Services (DACS)[14] and the FTC;[15]
- Honor a consumer's request not to receive further telephone calls, text messages, or voice mail transmissions. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.[16]

Additionally, s. 501.059(8), F.S., prohibits telephonic sales calls that:

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[7] Section 501.601, F.S., et. seq.
[8] Chapter 2021-185, s. 1, Laws of Fla.
[9] Section 501.059, F.S.
[10] *Id*.
[11] Eric Troutman, TCPAWorld, *The FTSA Claims are Still Pouring In: Florida Mini TCPA Continues to Generate Huge Volume of Litigation* (Dec. 13, 2021), https://tcpaworld.com/2021/12/13/the-ftsa-claims-are-still-pouring-in-florida-mini-tcpa-continues-to-generate-huge-volume-of-litigation/ (last visited Feb. 4, 2022).
[12] Section 501.059(1)(i), F.S.
[13] Section 501.059(1)(j), F.S.
[14] Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Feb. 4, 2022).
[15] *See*, ss. 501.059(3)-(4), F.S.; Federal Trade Commission, *National Do Not Call Registry*, https://www.donotcall.gov/ (last visited Feb. 4, 2022).
[16] Section 501.059(5), F.S.

- Use an automated system for the selection *or* dialing of telephone numbers or playing a recorded message to a number without the prior express written consent[17] of the called party;
- Fail to transmit the originating telephone number and, when possible, name of the solicitor; or
- Alter the voice of the caller in order to defraud, confuse, or injure the telephone call recipient.

Florida Do Not Call Act

Do Not Call List

The DACS also administers the Florida Do Not Call Act or the "Do Not Call List," which prohibits unsolicited phone calls and text messages.[18] Residents who do not wish to receive sales calls may request to have their residential, mobile, or paging device telephone number included on the DACS list.[19]

A communication is unsolicited, and therefore prohibited under the Do Not Call List, unless the contact is made:

- At the consumer's request;
- By a charitable or political organization that is seeking donations;
- As part of a survey, or for the purpose of research seeking an opinion;
- To a person with whom the telephone solicitor has a prior existing business relationship;
- In connection with an existing debt or contract for which payment is due; or
- By a newspaper publisher, or his or her agent or employee, in connection with the publisher's business.[20]

Continued Solicitations

Section 501.059, F.S., further prohibits a telephone solicitor[21] from calling, text messaging, sending a direct voicemail transmission, or using automated telephone equipment to contact any consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call, whether or not he or she is part of the Do Not Call List. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.

Penalties

The DACS or the Office of the Attorney General (OAG) may bring an action against a telephone solicitor who violates the provisions of s. 501.059, F.S. Each violation is subject to a civil penalty with a maximum fine of $10,000 per violation, or an administrative fine with a

[17] "Prior express written consent" is defined by s. 501.059(1)(g), F.S., as a written agreement: (1) Bearing the signature of the called party; (2) Clearly authorizing the person making the telephonic sales call to deliver it while using an automated system to select or dial telephone numbers, playing a recorded message, or transmitting a prerecorded voicemail;" (3) Including the authorized telephone number; and (3) Including a clear and conspicuous disclosure statement.
[18] *See* s. 501.059, F.S.; DACS, *supra*, note 14.
[19] Sections 501.059(3)-(4), F.S.
[20] Section 501.059(1)(k), F.S.
[21] Section 501.059(1)(i), F.S., defines a "telephone solicitor" as a natural person or business that does business in this state by making or causing to be made a telephone sales call.

maximum of $1,000 per violation.[22] In any civil litigation that is initiated by the DACS or the OAG, the court may award the prevailing party reasonable attorney fees and costs if the court finds that the losing party failed to raise a justiciable issue of law or fact, or if the losing party acted in bad faith.[23]

In addition, a private citizen may file a private civil action to either enjoin the violation or recover actual damages, or $500, whichever is greater, in addition to attorney's fees and costs. This civil penalty may be tripled by the court if it finds that the defendant knowingly or willfully committed the violation.[24]

Federal Law

Telephone Consumer Protection Act

The Telephone Consumer Protection Act of 1991[25] (TCPA) protects U.S. consumers from unwanted communications by restricting the use of autodialers, prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

The TCPA prohibits telephone solicitations that:

- Are made to residences before 8 a.m. and after 9 p.m.;
- Fail to provide the consumer with the solicitor's identity, including his or her true phone number via caller identification service,[26] and an opportunity to opt out of the current call, and all future calls, made by that solicitor;
- Send prerecorded messages to a residential line without the consumer's prior express consent, which may be on paper or through electronic means, including website forms or a telephone keypress;[27] and
- Use an autodialer or prerecorded messages to a cellular, emergency, or hospital room line without prior express consent.

Any telemarketing calls made to a cellular telephone number require written prior express consent. All others require either oral or written consent.[28] This specific provision does not apply to residential phone lines.[29]

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[22] Section 501.059(9), F.S.
[23] Section 501.059(11)(e), F.S.
[24] Sections 501.059(10)-(11), F.S.
[25] 47 U.S.C. § 227. *See also*, 47 CFR § 64.1200 (2012).
[26] 47 U.S.C. § 227(b)(2)(d). *See also*, 47 C.F.R. § 64.1601(e). *See also*, Federal Communications Commission, *Public Notice: FCC's Caller ID Rules for Telemarketers Become Effective* (Jan. 29, 2004) https://apps.fcc.gov/edocs_public/attachmatch/DA-04-206A1.pdf (last visited Feb. 4, 2022).
[27] FCC, *supra* note 2. *See also*, 47 CFR § 64.1200(a)(7)(i)(B), (b)(3). Certain calls made to a residential line, such as those by a tax-exempt nonprofit organization or calls that are subject to Health Insurance Portability and Accountability Act may be made without prior express consent.
[28] FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 4 (Jun. 18, 2015).
[29] In 2015, language was added to the TCPA to allow robocalls and autodialed calls to cell phones for the purpose of collecting a debt owed to the U.S. government. *See* 47 U.S.C. § 227(b)(1)(A)(iii). This provision was severed from the law by the U.S. Supreme Court in 2020 based on their finding that it was a content-specific speech regulation in violation of the first amendment. The Court left the TCPA's prohibition of robocalls and autodialed calls to cell phones intact. *Barr v. American Assc. of Political Consultants, Inc.*, 140 S. Ct. 2335 (2020). *See also*, 47 CFR § 64.1200(f)(8).

The TCPA's protections extend to text messaging in the same manner that they apply to telephone calls.[30]

The TCPA defines autodialers as "equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers."[31] The U.S. Supreme Court recently limited the effect of the TCPA by clarifying that it only regulates autodialers that have the capacity either to store, or to produce, a telephone number using a random or sequential number generator.[32] This limits the TCPA's regulations to the now obsolete sequential number dialer style of autodialer, versus the predictive dialing technology that most businesses use today.[33]

The TCPA grants a private right of action to pursue actual monetary damages or up to $500 per violation.[34] State attorneys general and the FCC also have jurisdiction to investigate and file civil claims based on violations of the TCPA.[35]

Federal Do Not Call Program

The FTC, in concert with the FCC, administers the National Do Not Call Program.[36] Telephone solicitors may not contact a consumer who participates in the National Do Not Call Program, unless the calls are:

- Made with a consumer's prior, express permission;
- Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
- Made by a tax-exempt organization.[37]

Truth in Caller ID Act

The Truth in Caller ID Act of 2009[38] protects consumers by prohibiting any person from transmitting misleading or inaccurate caller ID information, known as call spoofing, with the intent to defraud, cause harm, or wrongfully obtain anything of value. The FCC investigates and prosecutes violations of the act under its rules.[39] In recent years, the FCC has taken enforcement actions totaling $450 million in fines against telemarketers for call spoofing violations. Notably, the FCC imposed its largest fine ever against a Florida-based timeshare marketing operation.[40]

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[30] FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 2 (Jun. 18, 2015); FCC, *FCC Strengthens Consumer Protections Against Unwanted Calls and Texts* (Jun. 18, 2015) https://apps.fcc.gov/edocs_public/attachmatch/DOC-333993A1.pdf (last visited Feb. 4, 2022).
[31] 47 U.S.C. § 227(b)(1)(A).
[32] *Facebook, Inc. v. Duguid*, 141 S. Ct. 193 (2020).
[33] Amanda Shanor, SCOTUSblog, *Supreme Court Sides with Facebook in Narrowing the Federal Robocall Ban* (Apr. 1, 2021), https://www.scotusblog.com/2021/04/supreme-court-sides-with-facebook-in-narrowing-the-federal-robocall-ban/ (last visited Feb. 4, 2022).
[34] 47 U.S.C. § 227 (c)(5).
[35] 47 U.S.C. § 227 (f). *See*, 15 U.S.C. § 6101.
[36] Federal Communications Commission, *Stop Unwanted Calls and Texts* (Mar. 2, 2021), https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Feb. 4, 2022).
[37] 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).
[38] 47 U.S.C. § 227 (e).
[39] *See*, 47 CFR § 64.1604.
[40] Federal Communications Commission, *The FCC's Push to Combat Robocalls & Spoofing,* https://www.fcc.gov/spoofed-robocalls (last visited Feb. 4, 2022). *See also*, Federal Communications Commission, *FCC Fines Massive Neighbor Spoofing*

To protect individual privacy concerns, an individual caller may request to hide his or her phone number when making a call.[41]

III. Effect of Proposed Changes:

Prior Written Consent

The 2021 changes to s. 501.059, F.S., require prior express written consent to place a telephonic sales call to any consumer if the call would be made using an automated system to select *or* dial the telephone number, or to play a recorded message. This consent is required whether or not the caller and consumer had a prior business relationship.

CS/CS/CS/SB 1564 narrows the scope of those telephonic sales calls that are required to obtain the called party's prior express written consent prior to being placed by limiting the types of automated systems subject to s. 501.059, F.S., to those that select *and* dial telephone numbers, rather than those that select *or* dial the telephone numbers.[42]

The bill also amends the term "signature" to include those obtained via a compliant e-mail, website form, text message, telephone keypress, or voice recording. This expands the methods through which a telephone solicitor can collect a called party's prior express written consent to receive telephonic sales calls that use automated systems for specific functions.

The bill clarifies that prior express written consent is an agreement that allows telephonic sales calls that use an automated system to *transmit text messages* in addition to telephonic sales calls that use an automated system to select *and* dial telephone numbers, play a recorded message, or transmit a prerecorded voicemail.

Unsolicited Telephonic Sales Calls

The bill amends the term "unsolicited telephonic sales call," s. 501.059(1)(k), F.S., to exclude telephonic sales calls:

- Made within 120 days after an express request of the called party, rather than "in response to the request;" and
- For the purpose of polling or soliciting the expression of ideas, opinions, or votes, including polling or soliciting by text message.

Therefore, a person who makes a telephonic sales call that falls into one of the above exclusions from the definition of an "unsolicited telephonic sales call" is no longer required to:

Robocall Operation $120 Million (May 10, 2018) https://www.fcc.gov/document/fcc-fines-massive-neighbor-spoofing-robocall-operation-120-million (last visited Feb. 4, 2022).

[41] 47 CFR § 64.1601.

[42] According to one article, the "or" definition is less likely to capture automated systems that select telephone numbers and then allow a human to dial the number. *See* Daniel Blynn and Liz Clark Rinehart, *Florida Legislature to the Rescue? House Bill Proposed to Fix the Florida Telephone Solicitation Act's Autodialer Provision* (Jan. 14, 2022), https://www.jdsupra.com/legalnews/florida-legislature-to-the-rescue-house-7860376/ (last visited Jan. 24, 2022).

- Identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation;[43] or
- Adhere to Florida's Do-Not-Call list regulations.[44]

The bill adds a provision that permits the use of an automated system for the selection and dialing of telephone numbers with live messages or text messages if the call or message is made solely in response to an inquiry initiated by the called party. However, only three of these calls or messages may be made in response to each inquiry.

Clarifications

The bill replaces the term "person called" with the term "called party," consistent with existing law.

The bill clarifies that the award of attorney fees and costs to a prevailing party from a non-prevailing party in a civil case must result from a violation of s. 501.059, F.S., instead of a transaction involving a violation.

Effective Date and Retroactivity

The bill provides that it is remedial in nature and applies retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[43] Section 501.059(2), F.S.
[44] Section 501.059(3)-(4), F.S.

E. Other Constitutional Issues:

Retroactive Application of Law and Expression of Remedial Nature

Under Florida law, statutes are presumed to operate prospectively, not retroactively. Statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.[45] When expressly retroactive statutes have been litigated and appealed, the courts have been asked to determine whether the statute is remedial in nature so as to require application to cases that were pending at the time the statute went into effect. Generally, "the presumption applied to procedural and remedial statutes is that they are to apply to pending cases."[46] Conversely, a law that affects substantive rights by creating substantive new rights or imposing new legal burdens is presumed to apply prospectively.[47]

In a recent Florida Supreme Court case, the Court acknowledged that "[t]he distinction between substantive and procedural (remedial) law is neither simple nor certain."[48] The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.[49]

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.[50] Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.[51]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[45] *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977). *See also*, *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994). "Just because the Legislature labels something as being remedial, however, does not make it so." *See also*, *State v. Smith*, 547 So2d 613 (Fla. 1989); *State, Dep't of Transp. v. Knowles*, 402 So.2d 1155 (Fla. 1981).
[46] *Love v. State*, 286 So. 3d 177, 181 (Fla. 2019), *citing Arrow Air, Inc. v. Walsh*, 645 So.2d 422, 424 (Fla. 1994).
[47] *Arrow Air, Inc.*, at 424.
[48] *Love* at 183, *quoting Caple v. Tuttle's Design-Build, Inc*., 753 So. 2d 49, 53 (Fa. 2000).
[49] *Love* at 184.
[50] *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla 2004).
[51] *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.059 of the Florida Statutes:

IX. Additional Information:

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

CS/CS/CS by Rules on February 15, 2022:
Amends the definition of "signature" to include those made on agreements obtained by compliant e-mails, website forms, text messages, telephone keypress, or voice recordings. This expands the methods by which telephone solicitors can collect a called party's prior express written consent to receive certain telephone sales solicitation calls.

CS/CS by Regulated Industries on February 8, 2022:
- Adds prerecorded voicemails to the methods of telephonic solicitation that require prior written authorization from a called party;
- Rephrases the exception to "unsolicited telephonic sales calls" to include telephonic sales calls "for the purpose of" polling or soliciting the expression of ideas, opinions, or votes, rather than the exception being "limited to" such purpose;
- Increases the limitation on automated telephone dialing systems with live messages or text messages made in response to an inquiry initiated by the called party to three calls or messages, rather than two.

CS by Commerce and Tourism on January 24, 2022:
- Adds clarifying language that "prior express written consent" is an agreement that authorizes a telephonic sales call, which includes text messages;
- Exempts from the definition of an "unsolicited telephonic sales call" those calls and text messages that are made to poll or solicit the expression of ideas, opinions, or votes;
- Re-instates the 2021 requirement that a consumer's prior express written consent is needed to place a telephonic sales call that uses an automated system for the selection and dialing of telephone numbers, or playing of a recorded message;
- Expresses that s. 501.059(8), F.S.'s prohibited actions do not prohibit the use of an automated telephone dialing system with live messages or text messages if the call or

message is made solely in response to an inquiry initiated by the called party. However, only two calls or messages are permitted in response to each inquiry;
- Narrows the provision that permits an award of attorney fees and costs from those civil actions "resulting from a transaction involving a violation of this section" to those "resulting from a violation of this section;" and
- Makes the proposed language retroactive to July 1, 2021, and specifically applies to "any proceeding pending or commenced on or after July 1, 2021."

B. Amendments:

None.

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

457860

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with directory and title amendments)

Delete line 47
and insert:
(h) "Selection" means to randomly produce telephone numbers to be called without manual intervention.
(i) ~~(h)~~ "Signature" includes an electronic or digital signature, including when such signature is made on agreements obtained by a compliant email, website form, text message, telephone keypress, or voice recording, to the extent that such form of signature is recognized as a valid signature under

457860

applicable federal law or state contract law.

(l) ~~(k)~~ "Unsolicited telephonic sales call" means a telephonic

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

And the directory clause is amended as follows:

Delete lines 14 - 17

and insert:

Section 1. Present paragraphs (h) through (l) of subsection (1) of section 501.059, Florida Statutes, are redesignated as paragraphs (i) through (m), respectively, a new paragraph (h) is added to that subsection and paragraph (e) is added to subsection (8) of that section, and paragraph (g) and present paragraph (k) of subsection (1), paragraph (a) of subsection (8), and subsection (11) are amended, to read:

================ 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:

501.059, F.S.; defining and redefining terms; conforming a

522428

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (457860)

Delete line 5
and insert:
(h) "Selection" means to store or randomly produce telephone numbers

149210

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2022	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with directory amendment)

Between lines 46 and 47
insert:

(h) "Signature" includes an electronic or digital signature, including when such signature is made on agreements obtained by a compliant e-mail, website form, text message, telephone keypress, or voice recording, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

149210

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete line 14
and insert:
Section 1. Paragraphs (g), (h), and (k) of subsection (1),

By the Committees on Regulated Industries; and Commerce and Tourism; and Senator Hutson

580-02820-22 20221564c2

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; redefining terms; conforming a provision to changes made by the act; prohibiting the use of automated telephone dialing systems using certain types of messages under certain circumstances; authorizing such use in response to certain inquiries; providing a limitation; revising provisions for the award of attorney fees and costs; providing for retroactive application; providing an effective date.

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

Section 1. Paragraphs (g) and (k) of subsection (1), paragraph (a) of subsection (8), and subsection (11) of section 501.059, Florida Statutes, are amended, and paragraph (e) is added to subsection (8) of that section, to read:

501.059 Telephone solicitation.—

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

(g) "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, the transmission of a text message, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection and ~~or~~ dialing of telephone numbers, ~~or~~ the playing of a recorded message when a connection is completed to a number called, the transmission of a text message, or the transmission of a prerecorded voicemail; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

(k) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

1. Within 120 days after ~~In response to~~ an express request of the ~~person~~ called party;

2. Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;

3. To a person with whom the telephone solicitor has a prior or existing business relationship; ~~or~~

4. By a newspaper publisher or his or her agent or employee in connection with his or her business; or

5. For the purpose of polling or soliciting the expression

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

of ideas, opinions, or votes, including when such polling or soliciting is made by text message.

(8)(a) A person may not make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection and ~~or~~ dialing of telephone numbers, ~~or~~ the playing of a recorded message when a connection is completed to a number called, the transmission of a text message, or the transmission of a prerecorded voicemail without the prior express written consent of the called party.

(e) This subsection does not prohibit the use of an automated system for the selection and dialing of telephone numbers with live messages or text messages if the call or message is made solely in response to an inquiry initiated by the called party. However, only three such calls or messages may be made in response to each inquiry.

(11)(a) In any civil litigation resulting from a ~~transaction involving a~~ violation of this section, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his or her reasonable attorney ~~attorney's~~ fees and costs from the nonprevailing party.

(b) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(c) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

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

(d) Any award of attorney ~~attorney's~~ fees or costs shall become a part of the judgment and subject to execution as the law allows.

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney ~~attorney's~~ fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

Section 2. The amendments made by this act to s. 501.059, Florida Statutes, are remedial in nature and apply retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

Section 3. This act shall take effect July 1, 2022.

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

The Florida Senate

APPEARANCE RECORD

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Feb 15
Meeting Date

Rules
Committee

1564
Bill Number or Topic

149210
Amendment Barcode (if applicable)

Name Tim Meenan

Phone 850 425-4000

Address 400 S. Dual St.
Street

Tallahassee FC
City State Zip

Email Tim@meenanfirm

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:
Asurion

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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02/15/2022
Meeting Date

Rules
Committee

SB 1564
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ivonne Fernandez - AARP

Phone 954 850 7262

Address 215 S Monroe Suite 603
Street

Email ifernandez@aarp.org

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:
AARP

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/15/22
Meeting Date

Rules
Committee

1564
Bill Number or Topic

Amendment Barcode (if applicable)

Name Bill Cotterall

Phone

Address 218 S Monroe ST
Street

Email

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Florida Justice Association

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules
Committee

1564
Bill Number or Topic

Amendment Barcode (if applicable)

Name Adam Basford

Phone 224-7173

Address 516 N Adams
Street

Email abasford@gaf.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Associated Industries of FL

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

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

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S-001 (08/10/2021)

The Florida Senate

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2/15/22
Meeting Date

Rules
Committee

1564
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tim Meenan

Phone 850-425-4000

Address 300 S. Duval Street, Ste. 410
Street

Email Tim@meenanlawfirm.com

Tallahassee FL 32309
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:
Asurion

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

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

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S-001 (08/10/2021)

DUPLICATE

The Florida Senate

APPEARANCE RECORD

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Meeting Date

Rules

Committee

1564

Bill Number or Topic

Amendment Barcode (if applicable)

Name Ted Smith

Phone 850 445 0435

Address 400 n Monroe St

Street

Tallahassee FL 32301

City State Zip

Email teds@flada.org

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

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

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

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1954
INTRODUCER:	Transportation Committee and Senator Wright
SUBJECT:	Code and Traffic Enforcement
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Fav/CS**
2.	Hunter	Ryon	CA	**Favorable**
3.	Proctor	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1954 authorizes the sheriff or chief administrative officer of a county or municipality to designate an area as a special event zone in response to an unpermitted special event organized or promoted via a social media platform which is attended by 200 or more persons and substantially increases or disrupts the normal flow of traffic. The bill:

- Doubles the statutory fine for any noncriminal traffic infraction that occurs within a special event zone.
- Allows a law enforcement officer to impound a vehicle for up to 72 hours for any noncriminal traffic infraction or criminal traffic violation that occurs in a special event zone.
- Requires the sheriff or chief administrative officer to notify the State Fire Marshal or designee to enforce occupancy limits in a special event zone.
- Provides for the recovery of costs associated with designating and enforcing a special event zone from the organizer or promoter of the special event.

The bill revises provisions relating to the operation of radios or other soundmaking devices in vehicles and authorizes a local authority to impose more stringent regulations than those provided in statute.

The bill may have an indeterminate positive fiscal impact on state and local governments from the increased fines for noncriminal traffic infractions and the impoundment of vehicles for a noncriminal traffic infraction or a criminal traffic violation that occurs in a special event zone. The bill may have an indeterminate positive fiscal impact on local governments by authorizing

the sheriff or chief administrative officer of a county or municipality to recover the costs of designating and enforcing a special event zone from the promoter or organizer of a special event. See Section V. Fiscal Impact Statement.

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

II. Present Situation:

Special Event Zones

The ease of communicating over social media allows virtually anyone to organize spontaneous "pop-up" events that can attract large crowds, overwhelm local resources, and endanger the safety of the general public. During the 2021 Memorial Day weekend, an unpermitted pop-up event that was promoted on social media brought huge crowds to Daytona Beach.[1] The influx of people and resulting traffic congestion required law enforcement officers to close roads and bridges and limit beach access.[2] A month later, in June 2021, another unpermitted pop-up event brought approximately 35,000 people to Daytona Beach; leading to packed roads, fights, unruly behavior, property damage, excessive noise, and complaints from tourists and residents.[3] Although such behavior is prohibited under current law, law enforcement agencies and local government officials indicate that existing statutes are not a strong enough deterrent to curb such lawless behavior when an area is flooded with crowds, often with little or no notice to the local government.

Vehicle Impoundment

There are numerous reasons why law enforcement officers impound vehicles, including when a person commits a criminal act or is suspected of committing a felony, such as: vehicular homicide;[4] racing on highways;[5] driving under the influence;[6] illegal parking;[7] and driving with a suspended, revoked, canceled, or disqualified license.[8] However, a vehicle may also be impounded at the direction of the court, and for a canceled license plate or fuel-use tax decal[9].

Building Occupancy Limits

The Florida Building Code provides standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to limitations. Local amendments must be more stringent than the

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[1] Hadas Brown, *Crowds, concerning pictures prompt bridge traffic closures in Daytona Beach*, WESH (May 30, 2021), https://www.wesh.com/article/crowds-concerning-pictures-prompt-bridge-traffic-closures-in-daytona-beach/36576831# (last visited January 28, 2022).
[2] *Ibid.*
[3] Mike Springer and Sarah Wilson, *Complaints call for Daytona Truck Meet not to return next year*, WFTV (June 14, 2021), https://www.wftv.com/news/local/volusia-county/complaints-call-daytona-truck-meet-not-return-next-year/E2F5MBY6WVGDJF4NBI6QEYH45A/ (last visited January 28, 2022).
[4] Section 323.001, F.S.
[5] Section 316.191, F.S.
[6] Section 316.193, F.S.
[7] Section 316.1951, F.S.
[8] Section 322.34, F.S.
[9] Section 320.18, F.S.

minimum standards described law and must be transmitted to the Florida Building Commission within 30 days after enactment. The local government must make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required for governmental entities to apply the Florida Fire Prevention Code and the Life Safety Code contained in the Florida Building Code.[10] However, the provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to one-family and two-family dwellings.[11]

Florida Fire Prevention and Life Safety Code

The Florida Fire Prevention Code is adopted by the State Fire Marshal at three year intervals. It is a set of fire code provisions enforced by the local fire official within each county, municipality, and special fire district in the state.[12]

Section 633.212, F.S., provides legislative intent that the Florida Fire Prevention Code be interpreted by fire officials and local enforcement agencies in a manner that reasonably and cost effectively protects the public safety, health, and welfare; ensures uniform interpretations throughout this state; and provides just and expeditious processes for resolving disputes regarding such interpretations. Further, it is the intent of the Legislature that the Division of State Fire Marshal establish a Fire Code Interpretation Committee composed of seven members and seven alternates, equally representing each area of the state, to which a person can pose questions regarding the interpretation of the Fire Code provisions.[13]

The Life Safety Code is adopted and incorporated into the Florida Fire Prevention Code. It is the most widely referenced National Fire Protection Association (NFPA) source for occupant safety strategies based on construction, protection, and occupancy features in all stages of a building life cycle. Relevant to life safety in both new and existing structures, the NFPA covers everything from means of egress and features of fire protection to hazardous materials emergencies, injuries from falls, and emergency communications. The code applies to nearly all types of occupancies and structures, including residential, business, mercantile, health care, daycare, and assembly occupancies. [14]

Section 633.118, F.S., provides that the chiefs of county, municipal, and special-district fire service providers; other fire service provider personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire service providers are authorized to enforce laws and rules prescribed by the State Fire Marshal within their respective jurisdictions. Such personnel acting under this authority are agents of their respective jurisdictions, not agents of the State Fire Marshal.

[10] Section 553.73(4)(a), F.S.
[11] Section 633.208, F.S.
[12] Section 633.202, F.S.
[13] Section 633.212(1), F.S.
[14] National Fire Protection Association, *NFPA 101, Life Safety Code*, https://catalog.nfpa.org/NFPA-101-Life-Safety-Code-P1220.aspx (last visited on January 31, 2022).

Excessive Noise

Section 316.3045, F.S., provides that it is a noncriminal traffic infraction[15] for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is:

- Plainly audible at a distance of 25 feet or more from the motor vehicle; or
- Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.

The provisions of s. 316.3045, F.S., do not apply to any law enforcement or emergency vehicles equipped with any communication device necessary for the performance of their duties, or to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices.

In 2012, the Florida Supreme Court struck down s. 316.3045, F.S., holding that the statute was unconstitutionally overbroad because the exemption for vehicles used for business or political purposes created an impermissible content-based restriction on speech that was not narrowly tailored and protected commercial speech to a greater degree than noncommercial speech.[16] The Court held the unconstitutional portion of the statute exempting vehicles used for business or political purposes could not be severed from the remainder of the statute without expanding the scope of the statute beyond what the Legislature intended.[17] Thus, the Court invalidated the statute in its entirety.[18]

III. Effect of Proposed Changes:

Special Event Zones

SB 1954 creates s. 316.1891, F.S., which authorizes the sheriff or chief administrative officer of a county or municipality to designate an area as a special event zone in response to a special event that takes place or is reasonably anticipated to take place on a roadway, street, or highway over which the sheriff or chief administrative officer has jurisdiction. If a special event takes place or is reasonably anticipated to take place in multiple jurisdictions, the sheriff or chief administrative officer of each jurisdiction may coordinate to designate a special event zone covering multiple jurisdictions.

A "special event" is defined as an unpermitted temporary activity or event organized or promoted via a social media platform[19] which is attended by 200 or more persons and substantially increases or disrupts the normal flow of traffic along a roadway, street, or highway.

[15] A noncriminal traffic infraction in s. 316.3045, F.S., is punishable as a nonmoving violation under ch. 318, F.S. A nonmoving violation is punishable by a fine of $30. S. 318.18(2), F.S.
[16] *State v. Catalano, et al.*, 104 So. 3d 1069 (Fla. 2012).
[17] *Ibid* at 1081.
[18] *Ibid.*
[19] A "social media platform" means any information service, system, Internet search engine, or access software provider that:

A "special event zone" is defined as a contiguous area on or along a roadway, street, or highway which is designated by warning signs, and includes a parking structure, a parking lot, or any other property, whether public or private, immediately adjacent to or along the designated area.

The bill requires a sheriff or chief administrative officer to enforce a special event zone in a manner that causes the least inconvenience to the public and that is consistent with preserving the public health, safety, and welfare. The bill provides a special event zone must:

- Be designated by the posting of a clearly legible warning sign at each point of ingress or egress stating, "Special Event Zone–All Fines Doubled. Vehicles Subject to Impoundment for Traffic Infractions and Violations." The warning sign must be large enough to be clearly visible to occupants of passing vehicular traffic on roadways, with letters at least three inches in height, and must be posted at least 24 hours before enforcement may commence. The sheriff or chief administrative officer shall maintain a log of the date and time that, and the location where, each warning sign is posted.
- Remain in effect as long as is reasonably necessary to ensure the public health, safety, and welfare but may not remain in effect after the special event has dissipated or is attended by fewer than 100 people.

The bill provides that a person who commits a noncriminal traffic infraction[20] in a special event zone is required to pay a fine double the amount provided in statute.

The bill also provides for enhanced penalties for noncriminal traffic infractions[21] and criminal traffic violations[22] that occur within the boundaries of a special event zone. A law enforcement officer may impound the vehicle of any person who commits any noncriminal traffic infraction[23] or criminal traffic violation in a special event zone and the impoundment must not exceed 72 hours, and the motor vehicle must be released immediately upon the payment of any costs and fees for its impoundment, regardless of whether the payment is made before the 72-hour period. Unless the noncriminal infraction or criminal charge is dismissed, all costs and fees associated

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- Provides or enables computer access by multiple users to a computer server, including an Internet platform or a social media site;
- Operates as a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity;
- Does business in the state; and
- Satisfies at least one of the following thresholds:
  - Has annual gross revenues in excess of $100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index.
  - Has at least 100 million monthly individual platform participants globally.

The term does not include any information service, system, Internet search engine, or access software provider operated by a company that owns and operates a theme park or entertainment complex as defined in ss. 509.013 and 501.2041(1)(g), F.S.

[20] Examples of noncriminal traffic infractions include failing to signal (such as use of a blinker), broken or nonfunctioning taillamp, illegal window tint, modified exhaust system which emits noise above the level as originally manufactured, speeding, and failure to stop at a traffic signal.

[21] *Ibid.*

[22] Examples of criminal traffic violations include reckless driving, racing, and driving under the influence.

[23] "The bill does not limit the type of noncriminal traffic violation a vehicle could be impounded for. For example, the bill would allow a vehicle to be impounded if the driver failed to use a blinker in a special event zone." Department of Highway Safety and Motor Vehicles, *2022 Legislative Bill Analysis for SB 1954*, (January 28, 2022), p. 5 (on file in the Senate Committee on Transportation).

with such impoundment must be paid by the owner of a vehicle or, if a vehicle is leased or rented, by the person leasing or renting the vehicle.

The bill requires the sheriff or chief administrative officer of a county or municipality who designates a special event zone in response to a special event to notify the State Fire Marshal or person designated pursuant to s. 633.118, F.S., who must assist with the enforcement of occupancy limits on private or public property in a special event zone.

The bill provides the sheriff or chief administrative officer of a county or municipality that declares a special event zone may recover from a promoter or organizer of a special event all relevant costs or fees associated with designating and enforcing a special event zone. Such costs and fees include, but are not limited to, those incurred for providing supplemental law enforcement personnel, firefighters, emergency medical technicians or paramedics, and sanitation services. Under the bill, a "promoter or organizer" means a person or entity who arranges, organizes, or sponsors a special event.

Excessive Noise

The bill amends s. 316.3045, F.S., to address the excessive noise statute constitutionality and update the language for enforcement. Specifically, the bill:

- Expands the types of soundmaking devices in a motor vehicle from which excessive noise is prohibited by including a compact disc player, portable music or video player, cellular telephone, tablet computer, laptop computer, stereo, television, musical instrument, or electronic soundmaking device or instrument, which sound emanates from the motor vehicle.
- Provides a person violates the excessive noise prohibition by amplifying a sound that is louder than necessary for convenient hearing by a person inside a vehicle in an area adjoining private residences.
- Removes the noise exemption for vehicles used for business or political purposes, which may cure the constitutional issue cited by the Florida Supreme Court.
- Provides that a local authority may impose more stringent regulations on sound produced by a radio or other mechanical or electronic soundmaking device that emanates from a motor vehicle.

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:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate negative fiscal impact on citizens impacted by the doubling of fines for noncriminal traffic infractions that occur in a special event zone.

The bill may have an indeterminate negative fiscal impact on citizens impacted by the impoundment of a vehicle, or vehicles, in addition to any other penalty authorized by law, if the person commits a noncriminal traffic infraction or a criminal traffic violation in a special event zone.

The bill may have an indeterminate negative fiscal impact on the promoter or organizer of a special event because the bill authorizes the sheriff or chief administrative officer of a county or municipality to recover the costs of designating and enforcing a special event zone from the promoter or organizer of a special event, even if the event is cancelled in advance, and the sheriff or chief administrative officer of a county or municipality still decided to designate an area as a special event zone.

C. Government Sector Impact:

The bill may have an indeterminate positive fiscal impact on state and local governments from the increased fines for noncriminal traffic infractions and the impoundment of vehicles for a noncriminal traffic infraction or a criminal traffic violation that occur in a special event zone.

The bill may have an indeterminate positive fiscal impact on local governments by authorizing the sheriff or chief administrative officer of a county or municipality to recover the costs of designating and enforcing a special event zone from the promoter or organizer of a special event, even if the event is cancelled in advance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide requirements governing the size of a designated special event zone. This may result in widely differing interpretations by a sheriff or chief administrative officer of a county or municipality on the appropriate size for a special event zone.

The bill provides the sheriff or chief administrative officer of a county or municipality who designates a special event zone may recover from a promoter or organizer of a special event all relevant costs and fees associated with designating and enforcing the special event zone, including, but not limited to, costs and fees for the provision of supplemental law enforcement, firefighter, emergency medical technician or paramedic, and sanitation services, potentially even if a promoter or organizer of a special event cancelled the special event (days, weeks, or months) in advance. In addition, the bill does not specify a mechanism for recovering the costs and fees.

VIII. Statutes Affected:

This bill substantially amends section 316.3045 of the Florida Statutes.
This bill creates section 316.1891 of the Florida Statutes.

IX. Additional Information:

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

CS by Transportation on February 2, 2022:
The CS:

- Revises the definition for a special event to increase the number of people in attendance from 50 to 200;
- Provides the warning sign must be large enough to be clearly visible to occupants of passing vehicle traffic on roadways, with letters at least three inches in height, and must be posted at least 24 hours before the enforcement of a special event zone may commence;
- Requires the sheriff or chief administrator to maintain a log of sign postings;
- Provides that a special event zone will not remain in effect if attendance falls below 100 people;
- Provides that an impounded vehicle must be released immediately upon the payment of any costs and fees for its impoundment, regardless of whether the payment is made before the 72-hour impoundment period has expired; and
- Requires the sheriff or chief administrative officer of a county or municipality who designates a special event zone in response to a special event must notify the State Fire Marshal to assist with the enforcement of occupancy limits on private or public property in a special event zone.

B. Amendments:

None.

902096

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2022	.	
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	.	
	.	

The Committee on Rules (Wright) recommended the following:

Senate Amendment

Delete lines 95 - 99
and insert:
(b) All costs and fees for the motor vehicle impoundment must be paid to the towing company or person impounding the vehicle by the owner of the vehicle or the person authorized in writing under s. 713.78(10), regardless of whether the noncriminal traffic infraction or the criminal charge is dismissed.

By the Committee on Transportation; and Senator Wright

596-02635-22 20221954c1

A bill to be entitled

An act relating to code and traffic enforcement; creating s. 316.1891, F.S.; defining terms; authorizing a sheriff or chief administrative officer of a county or municipality to designate a special event zone under certain circumstances on a roadway, street, or highway; providing requirements for a special event zone; providing enhanced penalties for a person who commits a noncriminal traffic infraction in a special event zone; authorizing a law enforcement officer to impound the motor vehicle of a person who commits a noncriminal traffic infraction or a criminal traffic violation in a special event zone; limiting the term of such impoundment; requiring that the motor vehicle be immediately released upon payment of impoundment costs and fees; specifying persons who must pay the costs and fees for the impoundment; providing applicability; requiring a sheriff or chief administrative officer designating a special event zone to notify the State Fire Marshal or certain designated person, who shall assist with occupancy limit enforcement; providing for recovery of costs and fees associated with designating and enforcing a special event zone from the special event's promoter or organizer; amending s. 316.3045, F.S.; revising the types of soundmaking devices or instruments subject to the prohibition against operating or amplifying sound from within a motor vehicle in a certain manner; applying such prohibition to sound emanating from a

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596-02635-22 20221954c1

motor vehicle; prohibiting such operation or amplification in areas adjoining private residences; revising exemptions; providing construction; providing a penalty; providing an effective date.

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

Section 1. Section 316.1891, Florida Statutes, is created to read:

316.1891 Designation of special event zones; definitions; enhanced penalties; vehicle impoundment.—

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

(a) "Promoter or organizer" means a person or entity who arranges, organizes, or sponsors a special event.

(b) "Special event" means an unpermitted temporary activity or event organized or promoted via a social media platform, as defined in s. 501.2041(1), which is attended by 200 or more persons and substantially increases or disrupts the normal flow of traffic on a roadway, street, or highway.

(c) "Special event zone" means a contiguous area on or along a roadway, street, or highway which is designated by warning signs. The term includes a parking structure, a parking lot, or any other property, whether public or private, immediately adjacent to or along the designated area.

(2) In accordance with s. 316.008, the sheriff or chief administrative officer of a county or municipality may designate a special event zone in response to a special event that takes place or is reasonably anticipated to take place on a roadway, street, or highway over which the sheriff or chief

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administrative officer has jurisdiction. If a special event takes place or is reasonably anticipated to take place in multiple jurisdictions, the sheriff or chief administrative officer of each jurisdiction may coordinate to designate a special event zone covering multiple jurisdictions.

(3) The sheriff or chief administrative officer must enforce a special event zone in a manner that causes the least inconvenience to the public and that is consistent with preserving the public health, safety, and welfare. A special event zone must:

(a) Be designated by the posting of a clearly legible warning sign at each point of ingress or egress stating, "Special Event Zone—All Fines Doubled. Vehicles Subject to Impoundment for Traffic Infractions and Violations." The warning sign must be large enough to be clearly visible to occupants of passing vehicular traffic on roadways, with letters at least 3 inches in height, and must be posted at least 24 hours before enforcement may commence. The sheriff or chief administrative officer shall maintain a log of the date and time that, and the location where, each warning sign is posted.

(b) Remain in effect as long as is reasonably necessary to ensure the public health, safety, and welfare but shall not remain in effect after the special event has dissipated or is attended by fewer than 100 people.

(4) Notwithstanding any other provision of law, a person who commits a noncriminal traffic infraction in a special event zone must pay a fine double the amount provided in chapter 318.

(5)(a) In addition to any other penalty authorized by this section, a law enforcement officer may impound the motor vehicle

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of a person who commits a noncriminal traffic infraction or a criminal traffic violation in a special event zone. The term of impoundment authorized under this subsection shall not exceed 72 hours, and the motor vehicle must be released immediately upon the payment of any costs and fees for its impoundment, regardless of whether the payment is made before the 72-hour period.

(b) All costs and fees for the motor vehicle impoundment must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle, unless the noncriminal traffic infraction or the criminal charge is dismissed.

(c) Section 713.78 applies to a vehicle impounded under this subsection.

(6) The sheriff or chief administrative officer of a county or municipality who designates a special event zone in response to a special event shall notify the State Fire Marshal or person designated pursuant to s. 633.118, who shall assist with the enforcement of occupancy limits on private or public property in a special event zone.

(7) The sheriff or chief administrative officer of a county or municipality who designates a special event zone may recover from a promoter or organizer of a special event all relevant costs and fees associated with designating and enforcing the special event zone, including, but not limited to, costs and fees for the provision of supplemental law enforcement, firefighter, emergency medical technician or paramedic, and sanitation services.

Section 2. Section 316.3045, Florida Statutes, is amended

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to read:

316.3045 Operation of radios or other mechanical or electronic soundmaking devices or instruments in vehicles; exemptions.—

(1) A ~~It is unlawful for any~~ person operating or occupying a motor vehicle on a street or highway may not ~~to~~ operate or amplify the sound produced by a radio, tape player, compact disc player, portable music or video player, cellular telephone, tablet computer, laptop computer, stereo, television, musical instrument, or other mechanical or electronic soundmaking device or instrument, which sound emanates from ~~within~~ the motor vehicle, so that the sound is:

(a) Plainly audible at a distance of 25 feet or more from the motor vehicle; or

(b) Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining private residences, churches, schools, or hospitals.

(2) ~~The provisions of~~ This section does ~~shall~~ not apply to a ~~any~~ law enforcement ~~motor~~ vehicle equipped with a ~~any~~ communication device necessary in the performance of law enforcement duties or to an ~~any~~ emergency vehicle equipped with a ~~any~~ communication device necessary in the performance of ~~any~~ emergency procedures.

(3) ~~The provisions of this section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices. The provisions of this subsection shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable~~

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~~exercise of the police power, from regulating the time and manner in which such business may be operated.~~

~~(4) The provisions of~~ This section does ~~do~~ not apply to the noise made by a horn or other warning device required or permitted by s. 316.271. The Department of Highway Safety and Motor Vehicles shall adopt ~~promulgate~~ rules defining "plainly audible" and establish standards regarding how sound should be measured by law enforcement personnel who enforce ~~the provisions of~~ this section.

(4) This section does not prohibit a local authority from lawfully imposing more stringent regulations on sound produced by a radio or other mechanical or electronic soundmaking device or instrument as described in subsection (1), which sound emanates from a motor vehicle.

(5) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 3. This act shall take effect July 1, 2022.

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 10, 2022

I respectfully request that **Senate Bill 1954**, relating to Code and Traffic Enforcement, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom A. Wright

Senator Tom A. Wright
Florida Senate, District 14

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

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2/15/22
Meeting Date

Rules
Committee

SB 1954
Bill Number or Topic

Amendment Barcode (if applicable)

Name Neisha-Rose Hinds

Phone 786-363-1104

Address 4343 W Flagler St
Street

Email

Miami
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:
ACLU FL

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/15/21
Meeting Date

Rules
Committee

1754
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jose Diaz

Phone

Address 108 E Jefferson St
Street

Email jdiaz@aaclaw.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

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

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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/CS/HB 7001
INTRODUCER:	Rules Committee; State Affairs Committee; Public Integrity and Elections Committee; and Representative Koster
SUBJECT:	Implementation of the Constitutional Prohibition Against Lobbying by a Public Officer
DATE:	February 14, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rey	Phelps	RC	**Favorable**

I. Summary:

In 2018, the people of Florida amended the State Constitution to prohibit lobbying by certain public officers both during public service and for a six-year period following vacation of public office. The prohibitions address lobbying on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision. The amendment takes effect on December 31, 2022. It expressly authorizes the Legislature to enact implementing legislation to include definitions and penalties. Such legislation may deal with no other subject.

The bill implements the public officer lobbying prohibitions by:

- Providing definitions of terms that have no clear constitutional definition;
- Specifying that the prohibitions apply to persons in public office on or after December 31, 2022;
- Authorizing the Commission on Ethics (Commission) to investigate and determine violations of the new prohibitions;
- Providing a range of penalties for violations and directing the Commission to report post-service lobbying violations and recommended punishment to the Governor for imposition of penalties; and
- Authorizing the Chief Financial Officer and Attorney General independently to collect monetary penalties imposed.

The bill takes effect December 31, 2022.

II. Present Situation:

In 2018, the people of Florida amended the State Constitution to prohibit lobbying by certain public officers both during public service and for a six-year period following vacation of public

office.[1] The prohibitions address lobbying on issues of policy, appropriations, or procurement before the federal government, the Legislature, any state government body or agency, or any political subdivision. The amendment takes effect on December 31, 2022.[2] The amendment expressly authorizes the Legislature to enact implementing legislation to include definitions and penalties.[3]

The prohibitions affect the following officers:

- Statewide elected officers;
- Members of the Legislature;
- County commissioners;
- Constitutional county officers and county charter officers;
- School board members;
- School superintendents;
- Elected municipal officers,
- Elected special district officers in special districts with ad valorem taxing authority; and
- Secretaries, executive directors, and other administrative heads of executive branch departments.

Officers Defined in Statute

"Secretaries" and "executive directors" are not constitutional officers.[4] A "secretary" is appointed by the Governor to head a department and is not otherwise named in the State Constitution. An "executive director" is the chief administrative employee or officer of a department headed by a board or by the Governor or Cabinet. Other departments authorized by the State Constitution[5] may have administrative heads not identified as secretaries or executive directors. Moreover, statutory terminology is subject to change over time.

Florida has a variety of special districts with ad valorem taxing authority. Some such districts may not exercise ad valorem taxing authority without converting their governing board from landowner elected to a board elected by all qualified electors residing in the district.[6]

Commission on Ethics

The Commission on Ethics (Commission) was created by the Legislature in 1974 "to serve as guardian of the standards of conduct" for state and local public officials and employees.[7] State law designates the Commission as the independent commission provided for in s. 8(f), Art. II of the State Constitution.[8] Constitutional duties of the Commission consist of conducting

[1] S. 8(f), Art. II, Fla. Const. (effective 12/31/2022).
[2] S. 38, Art. XII, Fla. Const.
[3] S. 8(f), Art. II, Fla. Const. (effective Dec. 31, 2022).
[4] S. 20.03(5) and (6), F.S.
[5] S 6, Art. IV, Fl. Const.
[6] S. 190.006(3), F.S.
[7] Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, *available at* http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf (last visited January 10, 2022); *See also* S. 112.320, F.S.
[8] S. 112.320, F.S.

investigations and making public reports on all breach of trust complaints towards public officers or employees not governed by the judicial qualifications commission.[9] In addition to its constitutional duties, the Commission, in part:

- Renders advisory opinions to public officials;[10]
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws;[11]
- Administers the Executive Branch Lobbying Registration and Reporting Law;[12]
- Maintains financial disclosure filings of constitutional officers and state officers and employees;[13] and
- Administers automatic fines for public officers and employees who fail to timely file required annual financial disclosure.[14]

Restrictions on lobbying and related representation

The State Constitution prohibits members of the Legislature from personally representing another person or entity for compensation during a term of office before any state agency other than a judicial tribunal. Similarly, it also prohibits statewide elected officers and members of the Legislature from personally representing another person or entity for compensation before the government body or agency where the individual was an officer or member for two years following vacation of office.[15] The phrase "represent for compensation" appears to involve more activities than "lobbying" as defined by current laws. Legal representation in administrative proceedings and representation of a person under discipline by the House of Representatives or Senate are examples of representation barred by the previous constitutional restrictions but currently excluded from statutory definitions of lobbying.

Certain former local officials are also prohibited from personally representing another person or entity for compensation before the government body or agency where the individual was an officer for two years after vacating that office. This applies to elected county, municipal, special district, or school district officers and appointed school district superintendents.[16]

The Code of Ethics for Public Officer and Employees[17] prohibits a broad class of public officers and employees from representing another for compensation before their former employing agency for a period of two years following vacation of office.[18] In 2013, the statute was amended to prohibit former members of the Legislature from lobbying for compensation before the

[9] S. 8(f), Art. II, Fla. Const.
[10] S. 112.322(3)(a), F.S.
[11] S. 112.322(2)(b), F.S.
[12] Ss. 112.3215, 112.32155, F.S.
[13] S. 112.3144, F.S.
[14] S. 112.31455, F.S.; *see also* Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, *available at* http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf (last visited January 10, 2022).
[15] S. 8(e), Art. II, Fla. Const.
[16] S. 112.313(14), F.S.
[17] Pt. III, Ch. 112, F.S.
[18] S. 112.313(9), F.S.

executive branch for a period of two years following vacation of office.[19] That provision incorporates the definitions in the executive branch lobbyist registration law.[20]

Lobbyist registration laws

Current law requires registration before lobbying either the Legislature or the executive branch.[21] Those laws and their implementing rules provide definitions of terms applicable in those two divergent contexts. Registration is required of everyone who contracts for compensation or is employed for the purpose of lobbying or for whom government affairs constitutes a principal responsibility of their employment. Lobbying in the legislative context includes seeking the goodwill of a legislator or staff member. It also includes any attempt to influence legislative action.[22] Current law requires every state agency, state university, or community college employee who seeks to influence legislative action by appearing before or attending a legislative meeting to register as a lobbyist regardless of whether lobbying is merely incidental to their employment.[23] That requirement does not affect communications outside of the employer's normal business hours.[24] The House of Representatives and Senate enforce legislative lobbyist registration requirements.

In the context of the executive branch, lobbying means seeking to influence an agency decision and includes attempts to obtain the goodwill of agency officials or employees.[25] The executive branch registration law is limited to lobbying on decisions in the area of policy or procurement.[26] The Commission enforces executive branch lobbyist registration.[27] The Commission has defined "policy" and "procurement" in rules implementing executive branch lobbying registration.[28]

In each context, there are explicit clarifying exceptions. Under legislative lobbying, exceptions include:

- Responding to a request for information from a legislator, committee, or staff member;
- Appearing in response to a legislative subpoena;
- Providing advice or services to the Legislature under a contract that uses public funds;
- Representing a client in a disciplinary matter in the House of Representatives or Senate;
- A judicial or other state officer acting in his or her official capacity; and
- Appearing as a witness to provide information at the written request of the chair of a legislative meeting.[29]

Under executive branch lobbying, exceptions include:

[19] Ch. 2013-36, Laws of Fla.
[20] S. 112.3215, F.S.
[21] Ss. 112.3215(3), 11.045(2), F.S.
[22] S. 11.045(1), F.S., Joint Rule 1.1(2) (published with the House Rules).
[23] S. 11.061(1), F.S.
[24] *Id*.
[25] S. 112.3215(1)(f), F.S.
[26] *Id*.
[27] Ss. 112.322, 112.324, F.S.
[28] R. 34-12.020(9) and (11), F.A.C. Chapter 34-12, F.A.C. also supplies additional definitions and clarifies statutory exceptions.
[29] Joint Rule 1.1(3) and (4).

- A person representing a client in a judicial proceeding or a formal administrative proceeding under the Administrative Procedure Act[30] (APA);
- An employee of an executive branch agency or legislative or judicial branch entity acting in the normal course of his or her duties;
- A confidential informant providing confidential information for law enforcement purposes; and
- A person lobbying on a procurement in the lowest cost category under state procurement laws.[31]

The state ethics laws also regulate gifts of lobbyists or their principals to reporting individuals and procurement employees.[32] There is currently no state law definition of "lobbying" in the context of political subdivisions or the federal government.

Current law specifies officers with appropriate administrative or constitutional jurisdiction and authorizes them to impose penalties for ethics violations committed by particular public officers or employees.[33]

III. Effect of Proposed Changes:

The bill implements the constitutional lobbying prohibition for public officers, which is scheduled to go into effect on December 31, 2022. The bill defines a number of terms used in the constitutional provision and other terms needed for clarity. The bill provides that the prohibition applies to those holding public office on or after December 31, 2022. It provides for administrative enforcement of the constitutional prohibition and establishes penalties for violating the prohibition.

Definitions

The bill defines terms whose meaning may not be clear from the constitutional context in which they are used. The amendment applies to a specific set of public officers, three of which are not constitutionally identified offices. The bill defines "secretary" and "executive director" consistent with the executive branch organization statutes[34] and defines "other agency head" in a corresponding manner.

The bill defines "elected special district officer in a special district with ad valorem taxing authority" in a manner excluding community development district board members elected by landowners under a law that does not allow the board to levy ad valorem taxes until members have been elected by qualified electors.[35]

[30] Ch. 120, F.S.
[31] S. 112.3215(1)(h), F.S.
[32] S. 112.3148, F.S.
[33] S. 112.324(4)-(8), F.S.
[34] S. 20.03, F.S.
[35] S. 190.006(3), F.S.

The bill defines "lobby", "compensation", and "legislative action" in a manner consistent with current lobbying registration laws covering the legislative[36] and executive[37] branches. It defines "lobby for compensation" in a manner consistent with the definition of "lobbyist" in both registration laws.[38] The bill also defines "issue of policy" and "issue of procurement" consistent with current rules of the Commission.[39]

The bill defines "issue of appropriation" in a manner consistent with the appropriation power.

The bill also contextually defines lobbying before the federal government and lobbying before political subdivisions. Specifically, lobbying the federal government is limited to influencing a decision of the United States' legislative or executive branch where lobbyist registration is required. Lobbying a political subdivision is limited to legislative action or other discretionary decisions; it does not include administrative actions.

The bill defines "state government body or agency" in a manner consistent with the breadth of the constitutional provision to include any "department, agency, commission, council, board, or instrumentality" created by the state constitution or general law and "any official or officer thereof". Further, the bill provides that the term includes each state attorney, public defender, criminal conflict and civil regional counsel, and capital collateral regional counsel.

The bill defines "political subdivision" in a manner consistent with other laws but limited to categories addressed by the constitutional provision, excluding special districts that do not have ad valorem taxing authority. "Federal government" is defined as Congress and any federal executive branch department, office, agency, or instrumentality, corporate or otherwise, or any federal independent agency, including any unit thereof.

The bill defines "administrative action" as a category of decisions exempt from those covered by the definition of "lobby". The definition excludes procurement decisions, which are expressly included in the constitutional prohibitions. "Administrative action" includes APA proceedings in state agencies. However, the APA applies to neither federal agencies nor political subdivisions. For this reason, the bill provides a specific definition of administrative action outside APA proceedings. The definition incorporates the following specific examples of administrative matters:

- Any action or decision on a license, permit, waiver of regulation, development order or permit, or development agreement;
- Any quasi-judicial proceedings under s. 286.0155(2), F.S.;
- Any decision subject to judicial review; or
- Any other administrative procedure, except on an issue of procurement.

The explicit definition of administrative action works in conjunction with "a decision or determination of any rights, duties, or obligations made on a case-by-case basis," which is an exclusion provided in the definition of "issue of policy". Also related, the definition of "lobby

[36] S. 11.045(1), F.S.
[37] S. 112.3215(1), F.S.
[38] Ss. 11.045(1)(g), 112.3215(1)(h), F.S.
[39] R. 34-12.020(9) and (11), F.A.C.

for compensation" expressly excludes representation on a legal claim cognizable in court or other tribunal to include pre-litigation offers, demands, and negotiations. Together, these provide broader exemptions than those provided in the current lobbying registration laws with respect to administrative representations and settlement negotiations.

The definitions of "lobby" and "lobby for compensation" include exceptions consistent with the present registration laws. The bill broadens current exemptions for settlement negotiations regarding pending lawsuits expressly allowing pre-litigation demands, offers, and negotiations, but expressly excluding any claim bill pending in the Legislature. The bill also exempts expert witness testimony and related communications.

The definition of "lobby for compensation" departs from current legislative branch lobbying laws in treating state employees the same as private sector employees when not employed principally for government relations.

Finally, the bill defines "governmental entity" to include the federal government, the Legislature, any state government body or agency, or any political subdivision.

Administration

The bill applies the constitutional prohibitions only to persons serving in the affected public offices on or after December 31, 2022.

The bill deems a violation of the new constitutional prohibitions to be a violation of the Code of Ethics for purposes of administration. This authorizes the Commission to investigate and determine violations raised in a written sworn complaint or written authorized referral. The process invoked includes preliminary investigations by Commission staff, probable cause determinations by the Commission, adjudicatory hearings before the Division of Administrative Hearings, and final orders by the Commission.[40]

The bill provides penalties consistent with current penalties for prohibited lobbying and other prohibited representation.[41] The penalties are:

- Public censure and reprimand;
- A civil penalty up to $10,000; and
- Forfeiture of pecuniary benefits received from the violation, which must be paid to the General Revenue Fund.

The bill requires the Commission to report violations of the post-service lobbying prohibition and recommended penalties to the Governor for imposition of penalties. Existing referral requirements would apply to violations by current public officers.[42] The Chief Financial Officer and Attorney General are each authorized to collect any penalty imposed.

[40] S. 112.324, F.S.
[41] S. 112.317(1)(d), F.S.
[42] S. 112.324(4)-(8), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The constitutional amendment provides that implementing legislation "shall not contain provisions on any other subject".[43] The bill neither amends nor incorporates other laws assuring compliance with this requirement.

The bill defines terms used in the constitutional amendment, which have no clear constitutional definition. The following terms used in the amendment, but not defined in the bill, appear to have clear constitutional meaning:

- Government body or agency;
- Legislature;
- Public officer (the affected officers are specified in the amendment);
- County commissioner;
- Constitutional and county charter officers listed in the amendment;
- Elected municipal officer;
- School board member and superintendent of schools;
- The Legislature;
- Member of the Legislature;
- The Governor;
- Members of the Cabinet;
- Department; and
- Ad valorem taxing authority.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[43] S. 8(f)(5), Art. II, Fla. Const. (effective December 31, 2022).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 112.3121 and 112.3122.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

A bill to be entitled

An act relating to implementation of the constitutional prohibition against lobbying by a public officer; creating s. 112.3121, F.S.; providing definitions for the purpose of implementing the constitutional prohibition against lobbying by a public officer; creating s. 112.3122, F.S.; providing applicability; providing for administration; requiring the Commission on Ethics to report certain findings and recommendations to the Governor; providing penalties for a violation of the constitutional prohibition against lobbying by a public officer; authorizing collection of such penalties by specified entities; providing an effective date.

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

Section 1. Section 112.3121, Florida Statutes, is created to read:

112.3121 Definitions.—As used in this section and for purposes of implementing s. 8(f), Art. II of the State Constitution, the term:

(1) "Administrative action" means any process or decision regulated by chapter 120 or, for a state government body or agency or a political subdivision not subject to chapter 120, any action or a decision on a license, permit, waiver of regulation, development order or permit, or development agreement; any quasi-judicial proceeding on local government land use matters regulated by s. 286.0115(2); any decision subject to judicial review by petition for writ of certiorari or as otherwise prescribed by general law; or any other administrative procedure or procedure governed by existing law, ordinance, rule, or regulation, except on an issue of procurement.

(2) "Compensation" means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a recipient, directly or indirectly, from any source for lobbying activity.

(3) "Elected special district officer in a special district with ad valorem taxing authority" means an officer elected by the qualified electors of a special district, or appointed to fill an unexpired term of such officer, and does not include an officer elected by landowners when an election by qualified electors is a condition precedent to the exercise of the ad valorem taxing authority under s. 190.006(3). If such condition precedent does not apply, the term "elected special district officer in a special district with ad valorem taxing authority" means an officer elected by any method prescribed by law for a special district with ad valorem taxing authority.

(4) "Executive director" means the chief administrative

employee or officer of a department headed by a board or by the Governor and Cabinet.

(5) "Federal government" means the United States Congress, any federal executive branch department, office, agency, or instrumentality, corporate or otherwise, or any federal independent agency, including any unit thereof.

(6) "Governmental entity" means a state government body or agency, the Legislature, a political subdivision, or the federal government.

(7) "Issue of appropriation" means a legislative decision to expend or approve an expenditure of public funds, including decisions that are delegated to an administrator.

(8) "Issue of policy" means a change in a law or ordinance or a decision, plan, or course of action designed to influence or determine the subsequent decisions or actions of a governmental entity, to sell or otherwise divest public property, or to regulate conduct. The term does not include a decision or determination of any rights, duties, or obligations made on a case-by-case basis.

(9) "Issue of procurement" means a proposal to purchase or acquire property, an interest in property, or services by a governmental entity.

(10) "Legislative action" means introduction, sponsorship, testimony, debate, voting, or any other official action on a measure, resolution, amendment, nomination, appointment, report,

or other matter.

(11)(a) "Lobby" means to influence or attempt to influence an action or decision through oral, written, or electronic communication and, with respect to:

1. A state government body or agency, is limited to influencing decisions, other than administrative action, that are vested in or delegated to the state government body or agency, or an officer thereof;

2. The Legislature or other body that is vested with legislative power or the power to propose revisions to the State Constitution, is limited to influencing a procurement decision or any legislative action or nonaction by either the Senate or the House of Representatives, or any committee or office thereof, or by such other body or a committee or office thereof;

3. A political subdivision, is limited to influencing legislative actions or other discretionary decisions, but does not include administrative actions; or

4. The federal government, is limited to influencing a decision of the legislative or executive branch of the United States government for which registration as a lobbyist is required.

(b) The term "lobby" does not mean any of the following:

1. Providing or seeking to provide confidential information to be used for law enforcement purposes.

2. Appearing as a witness to provide information at the

written request of the chair of a legislative body or committee, including a legislative delegation meeting.

3. Appearing or offering written testimony under oath as an expert witness in any proceeding for any purpose related to the proceeding and communications related to such testimony.

(12)(a) "Lobby for compensation" means being employed or contracting for compensation, for the purpose of lobbying, and includes being principally employed for governmental affairs to lobby on behalf of a person or governmental entity.

(b) The term "lobby for compensation" does not include any of the following:

1. A public officer carrying out the duties of his or her public office.

2. A public or private employee, including an officer of a private business, nonprofit entity, or governmental entity, acting in the normal course of his or her duties, unless he or she is principally employed for governmental affairs.

3. Advice or services to a governmental entity pursuant to a contractual obligation with the governmental entity.

4. Representation of a person on a legal claim cognizable in a court of law, in an administrative proceeding, or in front of an adjudicatory body, including representation during prelitigation offers, demands, and negotiations, but excluding representation on a claim bill pending in the Legislature.

5. Representation of a person in any proceeding on a

complaint or other allegation that could lead to discipline or other adverse action against the person.

6. Representation of a person with respect to a subpoena or other legal process.

(13) "Other agency head" means the chief administrative employee or officer of a department that is not headed by an executive director or secretary.

(14) "Political subdivision" means a county, municipality, school district, special district with ad valorem taxing authority, or any agency or unit thereof.

(15) "Principally employed for governmental affairs" means that the principal or most significant responsibilities of the employee is to oversee the employer's various relationships with governmental entities or representing the employer in its contacts with governmental entities.

(16) "Secretary" means the head of a department who is appointed by the Governor.

(17) "State government body or agency" means any department, agency, commission, council, board, or instrumentality created by the State Constitution or established by general law and any official or officer thereof. The term includes, but is not limited to, a state attorney, a public defender, a criminal conflict and civil regional counsel, and a capital collateral regional counsel.

Section 2. Section 112.3122, Florida Statutes, is created

to read:

112.3122 Enforcement and penalties for constitutional prohibition against lobbying by a public officer.—

(1) Section 8(f), Art. II of the State Constitution applies to persons serving as public officers on or after December 31, 2022.

(2) For purposes of administrative enforcement, a violation of s. 8(f), Art. II of the State Constitution is deemed a violation of this part.

(3) If the commission finds that there has been a violation of s. 8(f)(3), Art. II of the State Constitution, the commission must report its findings and recommendations for appropriate action to the Governor who has the power to invoke any of the penalties under subsection (4).

(4) A violation of s. 8(f), Art. II of the State Constitution may be punished by one or more of the following:

(a) Public censure and reprimand.

(b) A civil penalty not to exceed $10,000.

(c) Forfeiture of any pecuniary benefits received for conduct that violates this section. The amount of the pecuniary benefits must be paid to the General Revenue Fund.

(5) The Attorney General and Chief Financial Officer are independently authorized to collect any penalty imposed under this section.

Section 3. This act shall take effect December 31, 2022.

The Florida Senate

APPEARANCE RECORD

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

02-15-2022
Meeting Date

Rules
Committee

SB 704
Bill Number or Topic

Amendment Barcode (if applicable)

Name Carolyn Taylor

Phone

Address 2520 Celtic cir
Street

Email

Pensacola FL 32503
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2022
Meeting Date

RULES
Committee

SB 7001
Bill Number or Topic

Amendment Barcode (if applicable)

Name JEAN SIEBENALER (SEE-BEN-AH-LER) Phone 513-532-5408

Address 7502 OLD BAY POINTE RD Email j.siebenaler@gmail.com
Street

MILTON FL 32583
City State Zip

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

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	HB 7003
INTRODUCER:	Public Integrity and Elections Committee and Representative Koster
SUBJECT:	Implementation of the Constitutional Prohibition Against Lobbying by a Former Justice or Judge
DATE:	February 14, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rey	Phelps	RC	**Favorable**

I. Summary:

In 2018, the people of Florida amended the State Constitution to prohibit lobbying by former justices and judges for a six-year period following vacation of judicial office. The prohibition addresses lobbying on issues of policy, appropriations, or procurement, and addresses lobbying before the legislative and executive branches of state government. The amendment takes effect on December 31, 2022. It expressly authorizes the Legislature to enact implementing legislation to include definitions and penalties. Such legislation may deal with no other subject.

Current law provides a number of lobbying restrictions based on public service. The State Constitution provides that legislators may not represent another for compensation before any state agency while serving in legislative office and legislators and statewide elected officers may not represent another for compensation before the government body where they were an officer or member for two years following vacation of office. The Code of Ethics for Public Officers and Employees prohibits a broad class of public officers and employees from representing another for compensation before their former department or employer for two years after leaving public service. Finally, state legislators may not lobby the executive branch, as defined by the lobby registration laws, for a period of two years after vacation of office.

Current law and related rules define lobbying and related terms for the purpose of registration to lobby both in the Legislature and in the executive branch.

There is no current law that prohibits lobbying by former justices and judges.

HB 7003 implements the constitutional prohibition on lobbying by former justices and judges for six years following vacation of judicial office. It provides definitions of terms that have no clear constitutional definition and provides that the prohibition applies to justices and judges who vacate office on or after December 31, 2022. It authorizes the Commission on Ethics (Commission) to investigate and determine violations of the new prohibition. The bill provides a range of penalties for violations and directs the Commission to report a violation and

recommended punishment to the Governor for imposition of penalties. Finally, it authorizes the Chief Financial Officer and Attorney General independently to collect monetary penalties imposed.

The bill takes effect December 31, 2022.

II. Present Situation:

In 2018, the people of Florida amended the State Constitution to prohibit a former justice or former judge from lobbying for compensation before the legislative or executive branches of state government for six years following vacation of his or her judicial position.[1] The prohibition addresses lobbying on issues of policy, appropriations, or procurement. The amendment takes effect on December 31, 2022.[2] The amendment expressly authorizes the Legislature to enact implementing legislation to include definitions and penalties.[3]

Restrictions on Lobbying

The Code of Judicial Conduct (Code) establishes standards for the ethical conduct of judges. However, the Code does not expressly address lobbying by current or former justices or judges. The Code does prohibit a judge from engaging in any political activity except on behalf of measures to improve the law, the legal system, or the administration of justice, or as expressly authorized by the Code or by law.[4] In addition the Code places certain restrictions on compensation for quasi-judicial and extrajudicial activities.[5] A judge may accept compensation, reimbursement, payment of expenses, and waiver of fees or charges if the source of such does not give the appearance of influencing the judge in the performance of his or her judicial duties or give the appearance of impropriety, subject to the specified restrictions.[6] The Code also states that a judge should not lend the prestige of judicial office to advance the private interests of the judge or others.[7] The Code is enforced through the Judicial Qualifications Commission (JQC), established by the State Constitution to investigate misconduct of justices or judges and recommend discipline up to and including removal from office. The Supreme Court is authorized to impose punishment for such conduct.[8]

There is currently no prohibition against former justices or former judges lobbying after vacation of office. However, senior judges eligible to preside in trial courts on temporary assignments are bound by the Code, except for specified provisions.[9] The restrictions might discourage such individuals accepting lobbying contracts. The Code currently requires disclosure of financial

[1] S. 13(b), Art. V, Fla. Const. (effective Dec. 31, 2022).
[2] S. 38, Art. XII, Fla. Const.
[3] S. 13(b), Art. V, Fla. Const. (effective Dec. 31, 2022).
[4] Canon 7 D, Florida Code of Judicial Conduct
[5] Canon 6, Florida Code of Judicial Conduct
[6] *Id*.
[7] Canon 2 B., Florida Code of Judicial Conduct
[8] S. 12(a)(1) and s. 12(c), Art. V, Fla. Const. The Court's discipline powers are alternative and cumulative to the power of impeachment and removal of justices and judges vested in the Legislature. S. 12(d), Art. V, Fla. Const., s. 17, Art. III, Fla. Const.
[9] Florida Code of Judicial Conduct, *available at* https://www.floridasupremecourt.org/content/download/402388/file/Code_Judicial_Conduct.pdf (last visited Jan. 16, 2022)

interests by judges vacating office.[10] There are no other rules, nor jurisdiction of the JQC, respecting conduct of justices or judges after they vacate judicial office.

Lobbyist Registration Laws

Current law requires registration before lobbying either the Legislature or the executive branch.[11] Those laws and their implementing rules provide definitions of terms applicable in those two divergent contexts. Registration is required of everyone who contracts for compensation or is employed for the purpose of lobbying or for whom government affairs constitutes a principal responsibility of their employment. Lobbying in the legislative context includes seeking the goodwill of a legislator or staff member. It also includes any attempt to influence legislative action.[12] Current law requires every state agency, state university, or community college employee who seeks to influence legislative action by appearing before or attending a legislative meeting to register as a lobbyist regardless of whether lobbying is merely incidental to their employment.[13] That requirement does not affect communications outside of the employer's normal business hours.[14] The House of Representatives and Senate enforce legislative lobbyist registration requirements.

In the context of the executive branch, lobbying means seeking to influence an agency decision and includes attempts to obtain the goodwill of agency officials or employees.[15] The executive branch registration law is limited to lobbying on decisions in the area of policy or procurement.[16] The Commission on Ethics (Commission) enforces executive branch lobbyist registration.[17] The Commission has defined "policy" and "procurement" in rules implementing executive branch lobbying registration.[18]

In each context, there are explicit clarifying exceptions. Under legislative lobbying, exceptions include:

- Responding to a request for information from a legislator, committee, or staff member;
- Appearing in response to a legislative subpoena;
- Providing advice or services to the Legislature under a contract that uses public funds;
- Representing a client in a disciplinary matter in the House of Representatives or Senate;
- A judicial or other state officer acting in his or her official capacity; and
- Appearing as a witness to provide information at the written request of the chair of a legislative meeting.[19]

Under executive branch lobbying, exceptions include:

[10] Canon 6 B., Florida Code of Judicial Conduct
[11] Ss. 112.3215(3), 11.045(2), F.S.
[12] S. 11.045(1), F.S., Joint Rule 1.1(2) (published with the House Rules).
[13] S. 11.061(1), F.S.
[14] *Id*.
[15] S. 112.3215(1)(f), F.S.
[16] *Id*.
[17] Ss. 112.322, 112.324, F.S.
[18] R. 34-12.020(9) and (11), F.A.C. Chapter 34-12, F.A.C. also supplies additional definitions and clarifies statutory exceptions.
[19] Joint Rule 1.1(3) and (4).

- A person representing a client in a judicial proceeding or a formal administrative proceeding under the Administrative Procedure Act[20] (APA);
- An employee of an executive branch agency or legislative or judicial branch entity acting in the normal course of his or her duties;
- A confidential informant providing confidential information for law enforcement purposes; and
- A person lobbying on a procurement in the lowest cost category under state procurement laws.[21]

The state ethics laws also regulate gifts of lobbyists or their principals to reporting individuals and procurement employees.[22] There is currently no state law definition of "lobbying" in the context of political subdivisions or the federal government.

Current law specifies officers with appropriate administrative or constitutional jurisdiction and authorizes them to impose penalties for ethics violations committed by particular public officers or employees.[23]

Commission on Ethics

The Commission was created by the Legislature in 1974 "to serve as guardian of the standards of conduct" for state and local public officials and employees.[24] State law designates the Commission as the independent commission provided for in s. 8(f), Art. II of the State Constitution.[25] Constitutional duties of the Commission consist of conducting investigations and making public reports on all breach of trust complaints towards public officers or employees not governed by the JQC.[26] In addition to its constitutional duties, the Commission, in part:

- Renders advisory opinions to public officials;[27]
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws;[28]
- Administers the Executive Branch Lobbying Registration and Reporting Law;[29]
- Maintains financial disclosure filings of constitutional officers and state officers and employees;[30] and

[20] Ch. 120, F.S.
[21] S. 112.3215(1)(h), F.S.
[22] S. 112.3148, F.S.
[23] S. 112.324(4)-(8), F.S.
[24] Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, *available at* http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf (last visited Jan. 16, 2022); *see also* s. 112.320, F.S.
[25] S. 112.320, F.S.
[26] S. 8(f), Art. II, Fla. Const.
[27] S. 112.322(3)(a), F.S.
[28] S. 112.322(2)(b), F.S.
[29] Ss. 112.3215, 112.32155, F.S.
[30] S. 112.3144, F.S.

- Administers automatic fines for public officers and employees who fail to timely file required annual financial disclosure.[31]

III. Effect of Proposed Changes:

Definitions

HB 7003 implements the constitutional lobbying prohibition for justices and judges vacating office, which is scheduled to go into effect on December 31, 2022. The bill defines a number of terms used in the constitutional provision and other terms needed for clarity. The bill provides that the prohibition applies to justices and judges vacating judicial office on or after December 31, 2022. It provides for administrative enforcement of the constitutional prohibition and establishes penalties for violating the prohibition.

The bill defines "lobby," "compensation," and "legislative action" in a manner consistent with current lobbying registration laws covering the legislative[32] and executive[33] branches. It defines "lobby for compensation" in a manner consistent with the definition of "lobbyist" in both registration laws.[34] The bill also defines "issue of policy" and "issue of procurement" consistent with current rules of the Commission.[35]

The bill defines "issue of appropriation" in a manner consistent with the appropriation power.

The bill defines "administrative action" as a category of decisions exempt from those covered by the definition of "lobby." This definition excludes procurement decisions, which are already expressly prohibited by the constitutional provision. "Administrative action" includes Administrative Procedure Act ("APA") proceedings in state agencies. For any agency not governed by the APA, the definition incorporates the following specific examples of administrative matters:

- Any action or decision on a license, permit, or waiver of regulation; and
- Any other administrative procedure, except on an issue of procurement.

The explicit definition of administrative action works in conjunction with "a decision or determination of any rights, duties, or obligations made on a case-by-case basis," which is an exclusion provided in the definition of "issue of policy." Also related, the definition of "lobby for compensation" expressly excludes representation on a legal claim cognizable in court or other tribunal to include prelitigation offers, demands, and negotiations. Together, these provide broader exemptions than those provided in the current lobbying registration laws with respect to administrative representations and settlement negotiations.

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[31] S. 112.31455, F.S.; *see also* Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, *available at* http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf (last visited Jan. 16, 2022).
[32] S. 11.045(1), F.S.
[33] S. 112.3215(1), F.S.
[34] Ss. 11.045(1)(g), 112.3215(1)(h), F.S.
[35] R. 34-12.020(9) and (11), F.A.C.

The definitions of "lobby" and "lobby for compensation" include exceptions consistent with the present registration laws. The bill broadens current exemptions for settlement negotiations regarding pending lawsuits, expressly allowing prelitigation demands, offers, and negotiations, but expressly excluding any claim bill pending in the Legislature. The bill also exempts expert witness testimony and related communications.

The definition of "lobby for compensation" departs from current legislative branch lobbying laws in treating state employees the same as private sector employees when not employed principally for government relations.

Finally, the bill defines "governmental entity" as an officer or agency of the executive or legislative branches of state government.

Administration

The bill applies the constitutional prohibition to a justice or judge who vacates his or her judicial position on or after December 31, 2022.

This bill deems a violation of the new constitutional prohibition to be a violation of the Code of Ethics[36] for purposes of administration. This authorizes the Commission to investigate and determine violations raised in a written sworn complaint or a written authorized referral. The process invoked includes preliminary investigations by Commission staff, probable cause determinations by the Commission, adjudicatory hearings before the Division of Administrative Hearings, and final orders by the Commission.[37]

The bill provides penalties consistent with current penalties for prohibited lobbying and other prohibited post-service representation.[38] The penalties are:

- Public censure and reprimand;
- A civil penalty up to $10,000; and
- Forfeiture of pecuniary benefits received from the violation, which must be paid to the General Revenue Fund.

The bill requires the Commission to report violations of the post-service lobbying prohibition and recommended penalties to the Governor for imposition of penalties. The Chief Financial Officer and Attorney General are each authorized to collect any penalty imposed.

The bill provides an effective date of December 31, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[36] Pt. III, Ch. 112, F.S.
[37] S. 112.324, F.S.
[38] S. 112.317(1)(d), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The constitutional amendment provides that implementing legislation "shall not contain provisions on any other subject."[39] The bill neither amends nor incorporates other laws, thus assuring compliance with this requirement.

The bill defines terms used in the constitutional amendment which have no clear constitutional definition. The following terms used in the amendment, but not defined in the bill, appear to have clear constitutional meaning:

- Justice;
- Judge;
- Legislative branch; and
- Executive branch.

Jurisdiction of the JQC and Impeachment

The JQC investigates allegations of judicial misconduct of current justices or judges. The constitutional prohibition is applicable to former justices and judges. Thus, the JQC lacks constitutional jurisdiction to enforce the post-service lobbying prohibition. Similarly, the Legislature's power to impeach and remove justices and judges would not reach post-service lobbying violations.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[39] S. 8(f)(5), Art. II, Fla. Const. (effective December 31, 2022).

C. Government Sector Impact:

A small amount of funds may be generated for the general revenue fund from penalties collected for violations of the lobbying ban. This bill may result in some expenditures for investigations of and hearings on violations by the Commission on Ethics.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 112.3123 and 112.3124.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

A bill to be entitled

An act relating to implementation of the constitutional prohibition against lobbying by a former justice or judge; creating s. 112.3123, F.S.; providing definitions for the purpose of implementing the constitutional prohibition against lobbying by a former justice or judge; creating s. 112.3124, F.S.; providing applicability; providing for administration; requiring the Commission on Ethics to report certain findings and recommendations to the Governor; providing penalties for a violation of the constitutional prohibition against lobbying by a former justice or judge; authorizing collection of such penalties by specified entities; providing an effective date.

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

Section 1. Section 112.3123, Florida Statutes, is created to read:

112.3123 Definitions.—As used in this section and for purposes of implementing s. 13(b), Art. V of the State Constitution, the term:

(1) "Administrative action" means any process or decision regulated by chapter 120 or, for agencies of the executive branch of state government not subject to chapter 120, any action or a decision on a license, permit, waiver of regulation, or any other administrative procedure or procedure governed by existing law, rule, or regulation, except on an issue of procurement.

(2) "Compensation" means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a recipient, directly or indirectly, from any source for lobbying activity.

(3) "Governmental entity" means an officer or agency of the executive or legislative branches of state government.

(4) "Issue of appropriation" means a legislative decision to expend or approve an expenditure of public funds, including decisions that are delegated to an administrator.

(5) "Issue of policy" means a change in a law or a decision, plan, or course of action designed to influence or determine the subsequent decisions or actions of a governmental entity, to sell or otherwise divest public property, or to regulate conduct. The term does not include a decision or determination of any rights, duties, or obligations made on a case-by-case basis.

(6) "Issue of procurement" means a proposal to purchase or acquire property, an interest in property, or services by a governmental entity.

(7) "Legislative action" means introduction, sponsorship,

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testimony, debate, voting, or any other official action on a measure, resolution, amendment, nomination, appointment, report, or other matter.

(8)(a) "Lobby" means to influence or attempt to influence an action or decision through oral, written, or electronic communication and, with respect to:

1. The executive branch of state government, is limited to influencing decisions, other than administrative action, that are vested in or delegated to an agency or officer thereof.

2. The legislative branch of state government, is limited to influencing a procurement decision or any legislative action or nonaction by either the Senate or the House of Representatives, or any committee or office thereof.

(b) The term "lobby" does not mean any of the following:

1. Providing or seeking to provide confidential information to be used for law enforcement purposes.

2. Appearing as a witness to provide information at the written request of the chair of a legislative body or committee, including a legislative delegation meeting.

3. Appearing or offering written testimony under oath as an expert witness in any proceeding for any purpose related to the proceeding and communications related to such testimony.

(9)(a) "Lobby for compensation" means being employed or contracting for compensation for the purpose of lobbying, and includes being principally employed for governmental affairs to

lobby on behalf of a person or public entity.

(b) The term "lobby for compensation" does not include any of the following:

1. A public officer carrying out the duties of his or her public office.

2. A public or private employee, including an officer of a private business, nonprofit entity, or any public entity acting in the normal course of his or her duties, unless he or she is principally employed for governmental affairs.

3. Advice or services to a governmental entity pursuant to a contractual obligation with the governmental entity.

4. Representation of a person on a legal claim cognizable in a court of law, in an administrative proceeding, or in front of an adjudicatory body, including representation during prelitigation offers, demands, and negotiations, but excluding representation on a claim bill pending in the Legislature.

5. Representation of a person in any proceeding on a complaint or other allegation that could lead to discipline or other adverse action against the person.

6. Representation of a person with respect to a subpoena or other legal process.

(10) "Principally employed for governmental affairs" means that the principal or most significant responsibilities of the employee is to oversee the employer's various relationships with governmental entities or representing the employer in its

contacts with governmental entities.

Section 2. Section 112.3124, Florida Statutes, is created to read:

112.3124 Enforcement and penalties for constitutional prohibition against lobbying by a former justice or judge.—

(1) Section 13(b), Art. V of the State Constitution applies to justices or judges who vacate their judicial position on or after December 31, 2022.

(2) For purposes of administrative enforcement, a violation of s. 13(b) Art. V of the State Constitution is deemed a violation of this part.

(3) If the commission finds that there has been a violation of s. 13(b), Art. V of the State Constitution, the commission must report its findings and recommendations for appropriate action to the Governor who has the power to invoke any of the penalties under subsection (4).

(4) A violation of s. 13(b), Art. V of the State Constitution may be punished by one or more of the following:

(a) Public censure and reprimand.

(b) A civil penalty not to exceed $10,000.

(c) Forfeiture of any pecuniary benefits received for conduct that violates this section. The amount of the pecuniary benefits must be paid to the General Revenue Fund.

(5) The Attorney General and Chief Financial Officer are independently authorized to collect any penalty imposed under

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FLORIDA HOUSE OF REPRESENTATIVES

HB 7003 2022

this section.

Section 3. This act shall take effect December 31, 2022.

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/15/22
Meeting Date

Rules
Committee

AB 7003
Bill Number or Topic

Amendment Barcode (if applicable)

Name Francia Julius Edwards

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City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

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2-15-2022
Meeting Date

Rules
Committee

SB 7003
Bill Number or Topic

Amendment Barcode (if applicable)

Name Deborah Baker-Rian

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Niceville FL 32578
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Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

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2-15-2022
Meeting Date

Rules
Committee

HB 7083
Bill Number or Topic

Amendment Barcode (if applicable)

Name Elisabeth Sandberg

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City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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The Florida Senate

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2/15/22
Meeting Date

Rules
Committee

SB 7003
Bill Number or Topic

Amendment Barcode (if applicable)

Name Choice Crim

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City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-15-22
Meeting Date

Rules
Committee

SB ~~SB~~ 7003
Bill Number or Topic

Amendment Barcode (if applicable)

Name Judy Byrne Ridley

Phone

Address 1501 Bayshore Dr.
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Niceville FL 32578
City State Zip

Email

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

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02-15-2022
Meeting Date

SB703
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Carolyn Taylor

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Pensacola FL 32503
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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15 February 2022
Meeting ~~Date~~

Rules
Committee

[redacted] 7003
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kathryn F. White

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Email kathrynfosterwhite@gmail.com

Ft Walton Bch FL 32547
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/15/2022
Meeting Date

RULES
Committee

HB 7003
Bill Number or Topic

Amendment Barcode (if applicable)

Name JEAN SIEBENALER (SEE-BEN-AH-LER) Phone 513-532-5408

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Street

MILTON FL 32583
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 2/15/2022 10:04:04 AM
Ends: 2/15/2022 1:23:07 PM **Length: 03:19:04**

10:04:03 AM Meeting called to order by Chair Passidomo
10:04:04 AM Chair with comments
10:04:07 AM Roll call by CAA
10:04:16 AM Quorum announced
10:04:43 AM Chair with opening comments
10:05:06 AM Tab 1 CS/SB 1012
10:05:28 AM Senator Burgess explains the bill
10:05:56 AM Senator Burgess waives close
10:06:00 AM Roll call on CS/SB 1012
10:06:09 AM CS/SB 1012 is reported favorably
10:06:30 AM Tab 5 CS/CS/SB 514
10:06:41 AM Senator Burgess explains the bill
10:06:59 AM Senator Gibson with question
10:07:03 AM Senator Burgess responds
10:07:44 AM Appearance Forms
10:07:58 AM Durell Tootle waives in support
10:08:03 AM Henry Munoz waives in support
10:08:08 AM Cheryl Chapleau waives in support
10:08:11 AM Douglas Cannatella waives in support
10:08:20 AM Justin Chapleau waives in support
10:08:27 AM Luz Robles waives in support
10:08:30 AM Catherine Fucini waives in support
10:08:37 AM Dayna Gaut waives in support
10:08:40 AM Robert Schmidt waives in support
10:08:43 AM Barbara Schmidt waives in support
10:08:47 AM Melissa Ramba, Opportunity Solutions, waives in support
10:08:52 AM David Meltzer waives in support
10:08:55 AM Vincente Rafael Perez Carreno waives in support
10:09:05 AM Senator Gibson in debate
10:09:35 AM Senator Burgess waives close
10:09:44 AM Roll call on CS/CS/SB 514
10:09:54 AM CS/CS/SB 514 is reported favorably
10:10:19 AM Tab 13 SB 892
10:10:30 AM Senator Burgess explains the bill
10:11:30 AM Senator Powell with question
10:11:36 AM Senator Burgess responds
10:11:58 AM Senator Powell with follow-up
10:12:03 AM Senator Burgess responds
10:12:41 AM Senator Gibson with question
10:12:45 AM Senator Burgess responds
10:13:16 AM Senator Gibson with question
10:13:22 AM Senator Burgess responds
10:13:48 AM Senator Gibson with follow-up
10:13:54 AM Senator Burgess responds
10:14:56 AM Senator Gibson with question
10:15:02 AM Senator Burgess responds
10:15:51 AM Appearance Forms
10:15:57 AM Trish Neely, League of Women Voters Florida, speaks against
10:17:33 AM Christian Camara, Florida Charter School Alliance waives in support
10:17:35 AM Shan Goff, Foundation for Florida's Future waives in support
10:17:45 AM Senator Burgess closes on the bill
10:17:52 AM Roll call on SB 892

10:18:39 AM SB 892 is reported favorably
10:18:47 AM Tab 19 CS/SB 1066
10:18:55 AM Senator Burgess explains the bill
10:19:41 AM Appearance Forms
10:19:46 AM Ray Colburn, Florida Fire Chiefs Association for the bill
10:19:56 AM Jennifer Cook Pruitt, FL Police Chiefs Association waives in support
10:20:03 AM Wayne Bernie Bernoska, Florida Professional Firefighters waives in support
10:20:12 AM Senator Book in debate
10:20:56 AM Senator Burgess closes on the bill
10:21:06 AM Roll call on CS/SB 1066
10:21:50 AM CS/SB 1066 is reported favorably
10:21:57 AM Tab 11 CS/SB 796
10:22:03 AM Senator Bradley explains the bill
10:22:55 AM Senator Bradley waives close
10:23:00 AM Roll call on CS/SB 796
10:23:05 AM CS/SB 796 is reported favorably
10:23:26 AM Tab 2 CS/CS/SB 190
10:23:42 AM Senator Brodeur explains the bill
10:23:55 AM Senator Brandes with question
10:24:08 AM Senator Brodeur responds
10:24:24 AM Appearance Forms
10:24:28 AM Christie Arnold, Florida Conference of Catholic Bishops, speaks against
10:25:46 AM Matt Dunagan, Florida Sheriffs Association, waives in support
10:25:51 AM Candace Ericks, Seminole Sheriff's Office, waives in support
10:25:56 AM Donn Scott, SPLC Action, waives against
10:26:03 AM Neisha Rose Hines, ACLU FL, waives against
10:26:15 AM Senator Brandes in debate
10:28:58 AM Senator Gibson in debate
10:29:54 AM Senator Boyd in debate
10:30:29 AM Senator Powell in debate
10:32:12 AM Senator Bracy in debate
10:32:45 AM Senator Farmer in debate
10:33:42 AM Senator Brodeur closes on the bill
10:34:00 AM Roll call on CS/CS/SB 190
10:34:44 AM CS/CS/SB 190 is reported favorably
10:35:24 AM Tab 20 CS/SB 1182
10:35:38 AM Senator Broxson explains the bill
10:36:10 AM Amendment Barcode 128856
10:36:18 AM Senator Broxson explains the amendment
10:36:38 AM Amendment is adopted
10:36:53 AM Senator Broxson waives close
10:37:02 AM Roll call on CS/CS/SB 1182
10:37:07 AM CS/CS/SB 1182 is reported favorably
10:37:43 AM Tab 22 SB 1204
10:37:50 AM Senator Broxson explains the bill
10:38:17 AM Appearance Forms
10:38:20 AM Christie Arnold, FL Conference of Catholic Bishops, speaks against
10:39:42 AM Michael McQuone speaks against
10:43:25 AM Virginia Hamrick, First Amendment Foundation, speaks against
10:44:15 AM Senator Brandes in debate
10:45:04 AM Senator Farmer in debate
10:46:54 AM Senator Broxson closes on the bill
10:47:03 AM Roll call on SB 1204
10:47:39 AM SB 1204 is reported favorably
10:48:15 AM Senator Farmer with question
10:48:20 AM Chair Passidomo responds
10:48:24 AM Tab 7 CS/SB 654
10:48:35 AM Senator Cruz explains the bill
10:49:06 AM Late filed Amendment Barcode 913776
10:49:13 AM Senator Cruz explains the amendment
10:49:52 AM Senator Book with question
10:49:59 AM Senator Cruz responds

10:50:24 AM Senator Book with question
10:50:28 AM Senator Cruz responds
10:50:55 AM Appearance Forms
10:50:59 AM Allie McNair, Florida Sheriffs Association, waives in support
10:51:04 AM Jason Harrell, Florida Court Clerks and Comptrollers, waives in support
10:51:12 AM Senator Book in debate
10:51:33 AM Senator Cruz waives close
10:51:39 AM Amendment is adopted
10:51:51 AM Appearance Forms
10:51:58 AM Jenna Hodgens, Hillsborough County Clerk & Comptroller, waives in support
10:52:06 AM Judy Byrne Riley waives in support
10:52:11 AM Cindy Stuart, Clerk of Court, waives in support
10:52:16 AM Mindy Murphy, CEO, The Spring, waives in support
10:52:23 AM Dr. Carolynn Zonia waives in support
10:52:31 AM Barbara DeVane, FL National Organization of Women, waives in support
10:52:38 AM Francine Julius Edwards waives in support
10:52:42 AM Kathryn White waives in support
10:52:46 AM Carollyn Taylor waives in support
10:52:51 AM Jean Siebenaler waives in support
10:53:00 AM Cherie Crim waives in support
10:53:04 AM Deborah Baker-Rian waives in support
10:53:07 AM Elisabeth Sandberg waives in support
10:53:15 AM Senator Cruz closes on bill
10:53:24 AM Roll call on CS/CS/SB 654
10:53:29 AM CS/CS/SB 654 is reported favorably
10:54:02 AM Tab 10 SB 728
10:54:10 AM Senator Harrell explains the bill
10:55:11 AM Amendment Barcode 618000
10:55:18 AM Senator Harrell explains the amendment
10:55:58 AM Senator Harrell waives close
10:56:03 AM Amendment is adopted
10:56:10 AM Appearance Forms
10:56:14 AM Matthew Land, Eve Air Mobility, speaks for
10:58:03 AM Kyle Shephard, City of Orlando, waives in support
10:58:05 AM Eric Prutsman, Florida Airports Council, waives in support
10:58:11 AM Anna Grace Lewis, Florida Chamber of Commerce Autonomous Florida Initiative, waives in support
10:58:17 AM Lauren Whritenour, Supernal/Genesis, waives in support
10:58:26 AM Senator Gibson in debate
10:58:51 AM Senator Harrell closes on bill
10:59:30 AM Roll call on CS/SB 728
10:59:38 AM CS/SB 728 is reported favorably
11:00:07 AM Tab 16 CS/SB 1046
11:00:15 AM Senator Hooper explains the bill
11:01:09 AM Senator Brandes with question
11:01:14 AM Senator Hooper responds
11:01:56 AM Senator Brandes in debate
11:02:15 AM Senator Hooper waives close
11:03:04 AM Roll call on CS/SB 1046
11:03:14 AM CS/SB 1046 is reported favorably
11:03:39 AM Tab 24 SB 1236
11:03:49 AM Senator Jones explains the bill
11:04:53 AM Amendment 327694
11:05:00 AM Senator Jones explains the amendment
11:05:23 AM Senator Jones waives close
11:05:27 AM Amendment is adopted
11:05:35 AM Senator Gibson with question
11:05:59 AM Senator Gibson with question
11:06:00 AM Senator Jones responds
11:06:21 AM Appearance Forms
11:06:27 AM Matt Dunagan, Florida Sheriffs Association, waives in support
11:06:30 AM Aaron Wayt, Florida Assn of Crim. Def Lawyers, waives in support
11:06:40 AM Senator Jones waives close

11:06:47 AM Roll call on CS/SB 1236
11:06:50 AM CS/SB 1236 is reported favorably
11:07:15 AM Tab 26 SB 1258
11:07:23 AM Senator Jones explains the bill
11:08:19 AM Appearance Forms
11:08:21 AM Holly Bullard, Florida Policy Institute, waives in support
11:08:28 AM Ivonne Fernandez, AARP, waives in support
11:08:35 AM Senator Jones waives close
11:08:39 AM Roll call on SB 1258
11:08:41 AM SB 1258 is reported favorably
11:09:13 AM Tab 12 CS/CS/SB 876
11:09:19 AM Senator Pizzo explains the bill
11:09:33 AM Amendment Barcode 546672
11:09:42 AM Senator Pizzo explains the amendment
11:09:57 AM Senator Pizzo waives close
11:10:01 AM Amendment is adopted
11:10:10 AM Senator Gibson with question
11:10:20 AM Senator Pizzo responds
11:11:00 AM Senator Gibson with question
11:11:06 AM Senator Pizzo responds
11:12:12 AM Senator Gibson with question
11:12:22 AM Senator Pizzo responds
11:12:37 AM Senator Gibson with question
11:12:40 AM Senator Pizzo responds
11:13:08 AM Appearance Forms
11:13:11 AM Matt Dunagan waives in support
11:13:14 AM Senator Pizzo waives close
11:13:19 AM Roll call on CS/CS/CS/SB 876
11:13:30 AM CS/CS/CS/SB 876 is reported favorably
11:13:59 AM Tab 15 SB 968
11:14:07 AM Senator Polsky explains the bill
11:14:31 AM Senator Polsky waives close
11:14:38 AM Roll call on SB 968
11:14:45 AM SB 968 is reported favorably
11:15:11 AM Tab 8 CS/SB 692
11:15:20 AM Senator Stewart explains the bill
11:16:20 AM Amendment Barcode 259910
11:17:21 AM Senator Stewart explains the amendment
11:17:27 AM Appearance Forms
11:17:59 AM Aaron Wayt, Florida Association of Criminal Defense Lawyers, waives in support
11:18:03 AM Senator Stewart waives close
11:18:09 AM Amendment is adopted
11:18:20 AM Senator Stewart waives close on bill
11:18:25 AM Roll call on CS/CS/SB 692
11:18:33 AM CS/CS/SB 692 is reported favorably
11:19:00 AM Tab 9 CS/SB 722
11:19:11 AM Senator Perry explains the bill
11:19:44 AM Appearance Forms
11:19:49 AM Catherine Fucini-Cannatella waives in support
11:19:55 AM Carlos Rodriguez waives in support
11:19:57 AM William Diaz waives in support
11:20:00 AM Dayna Gaut waives in support
11:20:03 AM Brian Fay waives in support
11:20:07 AM Liam McClay, Santa Fe College, waives in support
11:20:13 AM Carey Haughwout waives in support
11:20:16 AM Robert Schmidt waives in support
11:20:19 AM Barbara Schmidt waives in support
11:20:23 AM Douglas Cannatella waives in support
11:20:25 AM Luz Robles waives in support
11:20:30 AM Ignacio Carrasquero waives in support
11:20:33 AM Tyler Roderick waives in support
11:20:36 AM Durell Tootle waives in support

11:20:39 AM Jose Namune waives in support
11:20:45 AM Maria G. waives in support
11:20:54 AM David Meltzer waives in support
11:20:57 AM Aaron Wayt, Florida Association of Criminal Defense Lawyers, waives in support
11:21:02 AM Daniel Guck waives in support
11:21:10 AM Bill Barnett waives in support
11:21:13 AM Henry Munoz waives in support
11:21:16 AM Nicole Martin waives in support
11:21:19 AM Donn Scott, SPLC Action Fund, waives in support
11:21:23 AM Dannie McMillon, Florida PTO, waives in support
11:21:31 AM Senator Perry waives close
11:21:38 AM Roll call on CS/SB 722
11:21:40 AM CS/SB 722 is reported favorably
11:22:10 AM Tab 4 SB 442
11:22:21 AM Senator Rodriguez explains the bill
11:23:24 AM Appearance Forms
11:23:27 AM Lisa Tennyson, Monroe County, waives in support
11:23:32 AM Trish Neely, League of Women Voters Florida waives in support
11:23:35 AM Ryan Matthews, Monroe County waives in support
11:23:41 AM Senator Rodriguez waives close
11:23:44 AM Roll call on SB 442
11:23:49 AM SB 442 is reported favorably
11:24:15 AM Tab 6 CS/SB 590
11:24:22 AM Senator Rodriguez explains the bill
11:24:53 AM Amendment Barcode 755852
11:24:59 AM Senator Rodriguez explains the amendment
11:25:05 AM Senator Rodriguez waives close
11:25:12 AM Amendment is adopted
11:25:20 AM Senator Rodriguez waives close
11:25:29 AM Roll call on CS/CS/SB 590
11:25:31 AM CS/CS/SB 590 is reported favorably
11:26:02 AM Tab 27 CS/SB 1326
11:26:14 AM Senator Rodriguez explains the bill
11:26:44 AM Appearance Forms
11:26:48 AM Natalie Fausel, Palm Beach County, Broward County, waives in support
11:26:53 AM Jonathan Webber, Florida Conservation Voters, waives in support
11:26:59 AM Jess M. McCarty, Executive Assistant County Attorney - Miami-Dade County, waives in support
11:27:06 AM Senator Rodriguez waives close
11:27:11 AM Roll call on CS/SB 1326
11:27:13 AM CS/SB 1326 is reported favorably
11:27:34 AM Tab 32 SB 1380
11:27:50 AM Senator Rodriguez explains the bill
11:28:11 AM Late filed Amendment Barcode 280360
11:28:22 AM Senator Rodriguez explains the amendment
11:28:34 AM Senator Powell with question
11:28:45 AM Senator Rodriguez responds
11:29:15 AM Senator Powell with question
11:29:18 AM Senator Rodriguez responds
11:29:45 AM Appearance Form
11:29:51 AM Chris Moya, City Parking waives in support
11:29:58 AM Senator Rodriguez waives close
11:30:06 AM Amendment is adopted
11:30:10 AM Senator Gibson with question
11:30:21 AM Senator Rodriguez responds
11:31:03 AM Chris Moya, City Parking responds
11:31:36 AM Senator Powell with question
11:31:48 AM Mr. Moya responds
11:32:26 AM Senator Powell with follow-up
11:32:32 AM Mr. Moya responds
11:33:04 AM Senator Powell with question
11:33:06 AM Mr. Moya responds
11:33:22 AM Senator Gibson with question

11:33:40 AM Mr. Moya responds
11:33:59 AM Appearance Forms
11:34:04 AM French Brown Real Property, Probate, and Trust Law Section of the Florida Bar, waives in support
11:34:14 AM Senator Rodriguez waives close
11:34:20 AM Roll call on SB 1380
11:34:25 AM SB 1380 is reported favorably
11:34:51 AM Tab 33 CS/CS/SB 1432
11:35:05 AM Senator Rodriguez explains the bill
11:36:09 AM Senator Brandes with question
11:36:17 AM Senator Rodriguez responds
11:37:09 AM Senator Brandes with question
11:37:11 AM Senator Rodriguez responds
11:37:44 AM Senator Garcia with question
11:37:52 AM Senator Rodriguez responds
11:38:41 AM Appearance Forms
11:38:47 AM Kingsley Ross speaks for information
11:41:30 AM Stan Loveday speaks against
11:44:25 AM Jack White speaks against
11:47:10 AM Lisa Tennyson, Monroe County speaks in support
11:48:49 AM Senator Brandes with question
11:48:55 AM Ms. Tennyson responds
11:49:14 AM Senator Brandes with follow-up
11:49:19 AM Ms. Tennyson responds
11:49:27 AM Senator Brandes with question
11:49:41 AM Senator Garcia with question
11:49:48 AM Ms. Tennyson responds
11:50:54 AM Senator Garcia with follow-up
11:51:00 AM Ms. Tennyson responds
11:51:34 AM Joseph Salzverg, City of Key West, waives in support
11:51:40 AM Robert Reyes, Monroe County, waives in support
11:51:47 AM Senator Rodriguez closes on bill
11:51:56 AM Roll call on CS/CS/SB 1432
11:52:05 AM CS/CS/SB 1432 is reported favorably
11:52:31 AM Tab 28 CS/CS/SB 1332
11:52:43 AM Senator Wright explains the bill
11:53:49 AM Senator Wright waives close
11:53:55 AM Roll call on CS/CS/SB 1332
11:53:59 AM CS/CS/SB 1332 is reported favorably
11:54:26 AM Tab 30 SB 1360
11:54:34 AM Senator Wright explains the bill
11:55:04 AM Senator Wright waives close
11:55:08 AM Roll call SB 1360
11:55:14 AM SB 1360 is reported favorably
11:55:36 AM Tab 38 CS/SB 1954
11:55:44 AM Senator Wright explains the bill
11:57:18 AM Amendment Barcode 902096
11:57:23 AM Senator Wright explains the amendment
11:57:35 AM Senator Brandes with question
11:57:41 AM Senator Wright responds
11:58:04 AM Senator Brandes with question
11:58:06 AM Senator Wright responds
11:58:44 AM Senator Brandes with question
11:58:47 AM Senator Wright responds
11:58:53 AM Senator Brandes with question
11:58:57 AM Senator Wright responds
11:59:09 AM Senator Brandes with question
11:59:38 AM Senator Wright responds
12:00:10 PM Senator Farmer with question
12:00:18 PM Senator Wright responds
12:01:35 PM Senator Farmer with follow-up
12:01:45 PM Senator Wright responds
12:02:04 PM Senator Farmer with question

12:02:07 PM Senator Wright responds
12:02:30 PM Amendment is withdrawn
12:02:36 PM Senator Gibson with question
12:02:53 PM Senator Wright responds
12:04:08 PM Senator Powell with question
12:04:13 PM Senator Wright responds
12:04:41 PM Senator Powell with follow-up
12:04:50 PM Senator Wright responds
12:05:39 PM Senator Brandes with question
12:05:51 PM Senator Wright responds
12:06:18 PM Senator Brandes with question
12:06:21 PM Senator Wright responds
12:07:03 PM Senator Brandes with question
12:07:06 PM Senator Wright responds
12:07:19 PM Senator Brandes with question
12:07:22 PM Senator Wright responds
12:07:37 PM Appearance Forms
12:07:41 PM Neisha Rose Hines, ACLU FL, waives against
12:07:47 PM Jose Diaz speaks for information
12:08:36 PM Senator Powell in debate
12:09:23 PM Senator Gibson in debate
12:10:04 PM Senator Brandes in debate
12:12:04 PM Senator Farmer in debate
12:13:44 PM Senator Baxley in debate
12:14:39 PM Senator Wright closes on the bill
12:14:46 PM Roll call on CS/SB 1954
12:16:19 PM CS/SB 1954 is reported favorably
12:16:28 PM Tab 14 SB 940
12:16:36 PM Senator Baxley explains the bill
12:17:16 PM Appearance Form
12:17:19 PM Chris Childers speaks for the bill
12:17:58 PM Senator Brandes with question
12:18:05 PM Mr. Childers responds
12:18:27 PM Senator Brandes with follow-up
12:18:32 PM Mr. Childers responds
12:18:52 PM Senator Brandes with follow-up
12:18:59 PM Mr. Childers responds
12:19:50 PM Senator Brandes with question
12:19:53 PM Mr. Childers responds
12:20:11 PM Senator Baxley waives close
12:20:17 PM Roll call on SB 940
12:20:21 PM SB 940 is reported favorably
12:20:44 PM Tab 23 CS/CS/SB 1222
12:20:57 PM Senator Bean explains the bill
12:22:15 PM Appearance Forms
12:22:19 PM Layne Smith, Mayo Clinic, waives in support
12:22:26 PM Matthew Holliday, NCH Healthcare System, waives in support
12:22:34 PM Senator Gibson in debate
12:23:00 PM Senator Bean waives close
12:23:05 PM Roll call on CS/CS/SB 1222
12:23:09 PM CS/CS/SB 1222 is reported favorably
12:23:34 PM Tab 21 SB 1190
12:23:45 PM Senator Boyd explains the bill
12:24:13 PM Amendment Barcode 148564
12:24:30 PM Senator Boyd explains the amendment
12:24:42 PM Appearance Form
12:24:46 PM Richard Pinsky, Emergency Communication Industry of Florida speaks against
12:27:29 PM Senator Boyd closes on amendment
12:27:36 PM Amendment is adopted
12:28:15 PM Appearance Forms
12:28:25 PM Richard Pinsky waives against
12:28:33 PM Jon Pasqualone, FL Fire Marshall & Inspectors Association, speaks against

12:30:10 PM Jim Millican, Florida Fire Chiefs Association speaks against
12:30:45 PM Alan Perdue, Safer Buildings Coalition speaks against
12:33:58 PM Senator Boyd closes on the bill
12:34:06 PM Roll call on /CS/SB 1190
12:34:25 PM CS/SB 1190 is reported favorably
12:34:56 PM Tab 35 CS/SB 1526
12:35:05 PM Senator Boyd explains the bill
12:35:30 PM Senator Boyd waives close
12:35:36 PM Roll call on CS/SB 1526
12:35:41 PM CS/SB 1526 is reported favorably
12:36:08 PM Tab 29 CS/SB 1338
12:36:19 PM Senator Diaz explains the bill
12:36:46 PM Senator Diaz waives close
12:36:51 PM Roll call CS/SB 1338
12:37:15 PM CS/SB 1338 is reported favorably
12:37:25 PM Tab 18 CS/SR 1064
12:37:33 PM Senator Garcia explains the bill
12:38:23 PM Appearance Forms
12:38:24 PM Jess McCarty Miami-Dade County waives in support
12:38:32 PM Senator Garcia waives close
12:38:34 PM Roll call on CS/SR 1064
12:38:40 PM CS/SR 1064 is reported favorably
12:39:08 PM Tab 3 CS/SB 224
12:39:23 PM Senator Gruters explains the bill
12:39:48 PM Late-filed amendment Barcode 727890
12:40:02 PM Senator Hutson explains the amendment
12:40:12 PM A/A Barcode 713858
12:40:16 PM Senator Hutson explains the amendment to the amendment
12:40:55 PM AA is adopted
12:41:17 PM Amendment Barcode 727890 as amended
12:41:46 PM Senator Hutson explains the amendment
12:41:50 PM Senator Bracy with question
12:42:04 PM Senator Hutson responds
12:42:54 PM Amendment is adopted
12:43:14 PM Senator Brandes with question
12:43:26 PM Senator Gruters responds
12:43:49 PM Senator Brandes with question
12:43:52 PM Senator Gruters responds
12:44:26 PM Senator Brandes with question
12:44:29 PM Senator Gruters responds
12:44:49 PM Senator Gibson with question
12:45:01 PM Senator Gruters responds
12:46:20 PM Appearance Forms
12:46:23 PM Ed Chase, Palm Beach County, waives in support
12:46:27 PM Mary Winn, League of Women Voters, waives in support
12:46:33 PM Tara Taggert, Florida League of Cities, waives in support
12:46:37 PM Ashley Lyerly, American Lung Association, waives against
12:46:46 PM Jonathan Webber, Florida Conservation Voters, waives in support
12:46:52 PM Kyle Shephard, City of Orlando, waives in support
12:46:57 PM Trish Neely, League of Women Voters, waives in support
12:47:02 PM Ivonne Fernandez, AARP, waives in support
12:47:05 PM Robert Lewis, Sarasota County, waives in support
12:47:09 PM Pat Gerard waives in support
12:47:17 PM Eric Gerard waives in support
12:47:22 PM Bob McKee, Florida Assn of Counties, waives in support
12:47:29 PM Dannie McMillon waives in support
12:47:37 PM Rana Brown, City of Fort Lauderdale, waives in support
12:47:41 PM Dave Cullen, Sierra Club Florida, waives in support
12:47:52 PM Senator Bracy in debate
12:48:33 PM Senator Brandes in debate
12:51:22 PM Senator Gibson in debate
12:51:49 PM Senator Gruters closes on the bill

12:52:14 PM Roll call on CS/CS/SB 224
12:53:16 PM CS/CS/SB 224 is reported favorably
12:53:49 PM Tab 25 CS/SB 1246
12:54:04 PM Senator Gruters explains the bill
12:54:40 PM Appearance Form
12:54:44 PM Anthony DiMarco, FL Bankers Association, waives in support
12:54:53 PM Senator Gruters waives close
12:54:57 PM Roll call on CS/SB 1246
12:55:00 PM CS/SB 1246 is reported favorably
12:55:26 PM Tab 31 CS/SB 1368
12:55:37 PM Senator Gruters explains the bill
12:56:10 PM Senator Gruters waives close
12:56:15 PM Roll call on CS/SB 1368
12:56:20 PM CS/SB 1368 is reported favorably
12:56:44 PM Tab 36 SB 1552
12:56:55 PM Senator Gruters explains the bill
12:57:18 PM Senator Gruters waives close
12:57:24 PM Roll call on SB 1552
12:57:29 PM SB 1552 is reported favorably
12:57:56 PM Tab 17 SB 1054
12:58:06 PM Senator Hutson explains the bill
12:58:35 PM Appearance Forms
12:58:42 PM Austin Stowers, CFO Jimmy Patronis, waives in support
12:58:48 PM Damien Jane, Miami-Dade County Public Schools, waives in support
12:58:56 PM Shan Goff, Foundation for Florida's Future, waives in support
12:59:01 PM Dannie McMillon waives in support
12:59:06 PM Doug Bell, Business Law Section, Florida Bar, waives in support
12:59:11 PM Senator Hutson waives close
12:59:20 PM Roll call on SB 1054
12:59:32 PM SB 1054 is reported favorably
12:59:50 PM Tab 37 CS/CS/SB 1564
1:00:00 PM Senator Hutson explains the bill
1:00:45 PM Late-Filed amendment 149210
1:01:06 PM Senator Hutson explains the amendment
1:01:13 PM Senator Hutson comments on amendments
1:01:32 PM Appearance Form
1:01:37 PM Tim Meenan, Asurion waives in support
1:01:45 PM Amendment is adopted
1:01:55 PM Senator Gibson with question
1:02:02 PM Senator Hutson responds
1:02:36 PM Senator Farmer with question
1:02:47 PM Senator Hutson responds
1:03:45 PM Appearance Forms
1:03:47 PM Ivonne Fernandez - AARP waives in support
1:03:51 PM Bill Cotterall, Florida Justice Association, speaks for information
1:05:07 PM Adam Basford, Associated Industries of Florida, waives in support
1:05:12 PM Tim Meenan, Asurion, waives in support
1:05:15 PM Ted Smith waives in support
1:05:31 PM Senator Farmer in debate
1:06:50 PM Senator Gibson in debate
1:08:15 PM Senator Hutson closes on bill
1:08:28 PM Roll call on CS/CS/CS/SB 1564
1:08:45 PM CS/CS/CS/SB 1564 is reported favorably
1:09:13 PM Tab 40 HB 7003
1:09:35 PM Senator Hutson explains the bill
1:10:22 PM Appearance Forms
1:10:26 PM Francine Julius Edwards waives in support
1:10:30 PM Deborah Baker-Rian waives in support
1:10:36 PM Elisabeth Sandberg waives in support
1:10:43 PM Cherie Crim waives in support
1:10:47 PM Judy Byrne Riley waives in support
1:10:52 PM Carollyn Taylor waives in support

1:10:58 PM Kathryn White waives in support
1:11:01 PM Jean Siebenaler waives in support
1:11:07 PM Senator Farmer with question
1:11:20 PM Senator Hutson responds
1:11:41 PM Senator Farmer with follow-up
1:11:48 PM Senator Hutson responds
1:12:29 PM Senator Farmer in debate
1:13:30 PM Senator Hutson waives close
1:13:37 PM Roll call on HB 7003
1:13:45 PM HB 7003 is reported favorably
1:14:05 PM Tab 39 CS/CS/HB 7001
1:14:17 PM Senator Hutson explains the bill
1:14:29 PM Senator Powell with question
1:15:10 PM Senator Hutson responds
1:15:45 PM Senator Powell with follow-up
1:15:50 PM Senator Hutson responds
1:16:10 PM Senator Powell with question
1:16:14 PM Senator Hutson responds
1:17:30 PM Appearance Forms
1:17:33 PM Carollyn Taylor waives in support
1:17:36 PM Jean Siebenaler waives in support
1:17:41 PM Senator Hutson waives close
1:17:46 PM Roll call on CS/CS/HB 7001
1:17:49 PM CS/CS/HB/7001 is reported favorably
1:18:19 PM Tab 34 CS/SB 1502
1:18:33 PM Senator Powell explains the bill
1:19:44 PM Appearance Forms
1:19:47 PM Stephen Shiver, Florida Bar, waives in support
1:19:50 PM Martha Edenfield, The Real Property, Probate and Trust Law Section waives in support
1:19:58 PM Senator Powell waives close
1:20:02 PM Roll call on CS/SB 1502
1:20:06 PM CS/SB 1502 is reported favorably
1:20:43 PM Senator Gruters with vote motion on Tab 13
1:20:52 PM Senator Boyd with vote motion on Tab 26
1:20:57 PM Senator Stargel with vote motions on Tabs 1,2,4,5,6,7,8,9,10,11,12,13,15,16,18,19,20,22,24,26,27,28,30,32,33
1:21:15 PM Senator Garcia with vote motion on Tab 20
1:21:24 PM Senator Powell change yes vote to no on Tab 38
1:21:35 PM Senator Albritton with vote motions on Tabs 2,7,12,14,15,16,18,20,23,24,26,32
1:21:50 PM Senator Farmer with vote motions on Tab's 1,5,20 (change no vote to yes),21 (change yes vote to no)
1:22:08 PM Motions adopted
1:22:13 PM Senator Bracy with vote motions-unsure of Tabs - all in affirmative
1:22:27 PM Senator Gibson with comments
1:22:51 PM Senator Gibson moves to adjourn
1:22:53 PM Meeting adjourned